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Nos. 95-1649, 95-9075

In The

Supreme Court of the United States

October Term, 1995

STATE OF KANSAS,

Petitioner,

v.

LEROY HENDRICKS,

Respondent.

LEROY HENDRICKS,

Cross-Petitioner,

v.

STATE OF KANSAS,

Cross-Respondent.

On Writ Of Certiorari
To The Supreme Court of The State Of Kansas

JOINT APPENDIX
Volume II pp. 292-580

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DIRECT EXAMINATION

BY MR. WEILERT:

Q. Would you tell us your name please, sir.

A. William S. Logan.

Q. And what is your profession?

A. I'm a physician that specializes in psychiatry.

Q. And in the speciality of psychiatry, do you have any sub-specialty?

A. Yes, I'm a forensic psychiatrist.

Q. What is a forensic psychiatrist?

A. Forensic psychiatrist is one who works with patients who have some connection with both the legal system and the mental health system.

Q. And can you tell us what education you have had that would lead you – pardon me – that qualifies you for that occupation or profession?

A. Okay. I have a bachelor of science degree in biology with a specialization in microbiology. I also have a bachelor of arts degree in psychology. I have a doctor of medicine degree that was obtained from the University of Texas Southwestern Medical School in Dallas. I completed a [p. 411] four-year training program in psychiatry from Timberlawn in Dallas. I also completed a year of special study in law and psychiatry – It's called a fellowship – at the Menninger Clinic, Topeka.

Q. Aside from the formal education, have you had any other experience that qualifies you as a forensic psychiatrist?

A. Yes. For three years I worked as a forensic scientist, evaluations for the district courts at a place called the Medical Center for Federal Prisoners located in Springfield, Missouri. And what I would do – would look at individuals primarily charged with things such as presidential threats and bank robberies and then testify in various federal courts about their mental states or whether they were competent to stand trial. And in addition, after I completed my year of training at the Menninger Clinic, I was asked to be their director of law in the Department of Psychiatry and did that for eleven years until mid-1993, when I went into private practice.

Q. And what type of work do you do in private practice?

A. Combination of general psychiatry and forensic psychiatry.

Q. Have you published any materials in the area of forensic psychiatry?

A. Yes, I published a couple of articles; one about the evaluation of impaired physicians; and it came out of some – [p. 412] some of my work as a consultant for the Kansas State Board of Healing Arts. And one of the things that they would do was refer physicians to me that had some kind of emotional difficulty or substance abuse problems. On another occasion I published a study about presidential threat, technically addressing one part of that. Presidential – threats against the president.

Q. Perhaps it might be better if the court reporter was in front of him. Would that help you?

You can continue.

A. One article involved trying to predict which presidential threateners might make some actual approach to the president, since the secret service would often ask us for our opinion on those kind of issues.

Q. Do you have licenses to practice in medicine?

A. Yes, I do. In Texas, Missouri, Kansas and Nebraska.

Q. And you mentioned that you have specialities and a sub-specialty. Do you hold any certifications in those specialities?

A. Yes, I'm certified in both psychiatry by the American Board of Psychiatry and neurology and also in forensics by the American Board of Forensic Psychiatrists.

Q. And what does it mean to be certified by those boards, sir?

A. It means you have had to complete a training program [p. 413] that's recognized by the board, and you have to pass a written examination. And then those who pass the written examination have to pass an oral examination in the case of forensic psychiatry. You also have to submit a work sample for review by various examiners that has to pass criteria as well.

Q. Okay. In addition to the formal education you've told us about, have you attended other courses and seminars in the areas of forensic psychiatry?

A. Yes, I have.

Q. And would you tell us briefly what those have been, sir?

A. Primarily I get most of my continuing medical education at the American Psychiatric Association annual meetings; and then I also belong to several forensic organizations, the primary one being the American Academy of Psychiatry and the Law.

Q. And how long have you been a member of that association?

A. Oh, eleven years.

Q. How long have you been practicing in the area of forensic psychiatry?

A. Thirteen years.

Q. And a good part of that you said was at the Menninger Foundation?

A. Yes, sir, that's true.

Q. Are you a member of any professional organizations other [p. 414] than those that you have just mentioned?

A. The American Academy of Forensic Science is one that I belong to as as well.

Q. Have you ever held office in any of those associations?

A. Yes, I've been the Western Chapter president of the American Academy of Psychiatry and Law, currently on the editorial staff of their newsletter.

Q. Are you affiliated with any hospitals in the practice of forensic psychology – pardon me – psychiatry?

A. The Menninger Clinic. Also affiliated as a consultant with the State Security Hospital in Larned. The

Larned – part of Larned as well that treats civilly-committed patients and similar function as a consultant at Osawatomie State Hospital.

Q. In addition to taking courses, have you had occasion to teach courses in forensic psychiatry?

A. Yes. In fact, one of my job roles at the Menninger Clinic was the director of their forensic education program teaching issues about forensic psychiatry to their psychiatric residents or the people that are in training there, as well as running a forensic fellowship myself.

Q. Have you ever been called upon to give presentations at other seminars?

A. Yes.

Q. Other than the ones you've attended for your own [p. 415] benefit?

A. Yes.

Q. Can you give us an approximation of how many?

A. Oh, I have to look at my curriculum vita and count them. Looks like I've been asked to talk either about dangerousness or prediction of sexual or general characteristics of sex offender about 16 times before various different organizations which have varied anywhere from state hospital staff to a meeting of Shawnee County judges to the Trial Lawyers Association.

Q. Okay. And have you been recognized as an expert in any courts to give testimony as an expert?

A. Yes. Well, numerous courts throughout Kansas. I think at one point I count that I testified in approximately

five of the fifty states, and so I have been certified as an expert in all of those locations. Numerous.

MR. WEILERT: Thank you. Your Honor, at this time we would ask that Dr. Logan be permitted to testify as an expert.

MS. FOULSTON: No objection.

THE COURT: I'll so permit.

MR. WEILERT: Thank you.

BY MR. WEILERT:

Q. Dr. Logan, in the field of the forensic psychiatry, historically has that profession been called upon to render [p. 416] opinions regarding dangerousness or prediction of dangerous behavior?

A. Yes, psychiatrists and psychologists have been put to that role on a number of occasions and sometimes volunteer for it.

Q. Okay. Can you give the jury a historical background.

A. There was a time in the history of psychiatry and psychology, primarily in the late 1960's and late 1970's – There was a great deal of optimism about our ability to predict who might be violent in the future and who might be safe. However, beginning in the late 1960's through about the mid-1970's, there was a series of about five studies where for various legal reasons large numbers of mentally ill patients classified as dangerous were released to the community. I don't know if you want me to go through those studies. But essentially what it was found

out is that far from being able to predict who was dangerous – And that we were right only only about a third of the time. If we predicted that somebody was gonna be safe, we were right about 90 percent of the time. If we were going to predict who was gonna be dangerous in the future, we were wrong twice and right one essentially; and that caused psychiatry to take a look at how many people that might be detaining for treatment, when in fact two out of three of those individuals might not be dangerous. And since being in some kind of a [p. 417] institution involved some curtailment of liberty of that individual, psychiatrists got a lot more circumspect about the kind of predictions that they were willing to make. And typically what they tend to do after this point is refrain from making long-term predictions about how an individual will function in favor of more short-term predictions; like we might be able to tell you how somebody would do over the next three weeks or next week based on their mental state; but it is gonna be difficult if we are asked to predict how they are going to perform three years from now, five years from now. Instead, what was developed was assigning things that put people at either higher risk or lower risk for being some danger, but it is difficult to specify or say how much of a risk those individuals might be if they had some of the risk factors.

Q. You mentioned some studies that were done with the release of mentally ill persons. What were those? First of all, where did the population for those studies come from?

MS. FOULSTON: Your Honor, I object to no foundation at this point.

THE COURT: Now, in regards to what? I'm sorry? That last question? He's asking where –

MS. FOULSTON: Yes, Your Honor, he is inquiring as to what, quote, "global studies" – Dr. Logan has not testified to specific studies. We're talking in a [p. 418] very nebulous area.

THE COURT: Well, I'll sustain the objection. If you want to talk about specific studies and where the population groups came from, that would be fine.

BY MR. WEILERT:

Q. You mentioned that there were some studies done in the late sixties and early seventies, if my memory serves me correctly, where evaluations of dangerousness were tested. Is that basically correct?

A. Yes.

MS. FOULSTON: Your Honor, I object to the leading and suggestive nature of Counsel's questions on direct examination.

THE COURT: Well, I'm going to overrule. I consider that a preliminary question. You may continue.

A. Yes, that is correctly summarizing my testimony.

BY MR. WEILERT:

Q. Okay. Can you tell us where the population groups that those studies came from?

MS. FOULSTON: Your Honor, what studies? I object. There's no foundation.

THE COURT: Can we establish what studies were talked about in the sixties and seventies?

BY MR. WEILERT:

Q. Can you tells [sic] specifically what studies were done in the [p. 419] late sixties and early seventies?

A. Yes, I can.

Q. Would you do that, please.

A. Okay. The first study was one that resulted from the fact that the United States Supreme Court made a decision in a case that–

MS. FOULSTON: Your Honor, I would object again. The witness is not being responsive to the question. He's giving testimony about something that there's no foundation–

THE COURT: Well, I'll sustain. I just believe we're going – The question went to what were the studies.

BY MR. WEILERT:

Q. If you could just first of all identify the studies that you were talking about or would be talking about.

A. One of them involved release of nearly a thousand patients from New York State Hospital. Another one in Pennsylvania ruled in the release of 438 mental disorder offenders from their state hospital. There was a release of 386 inmates from a Massachusetts Center for the Diagnosis and Treatment of Dangerous Persons. Primarily these were dangerous sex offenders. A fourth study had to do with release of a number of individuals from Patuxent Institution, which was an institution designed in Maryland for the [p. 420] treatment of those

with anti-social personality who had been incarcerated. Another New York study had to do with 257 inmates found incompetent to stand trial.

MS. FOULSTON: Your Honor, I'm still going to object on the basis that my understanding is that there are names for studies; there are identifications of individuals who perform studies; there are outlines for the studies. There are different types of individuals who are involved. Some of them could be murderers. Some of them could be robbers, thieves, arsonists. Some of them could be sex offenders. And there's no foundation that the relevancy of these studies is relevant to these issues in this court today. And when doctor says one was about release of a thousand patients in New York; one was about 438 here; one was 368 in Massachusetts; one was from Patuxent, Maryland; and one was anti-social, and one was this. That's not a foundation, and I would object.

THE COURT: Well, Mr. Weilert, please try to get more specific as to exactly what these studies were.

BY MR. WEILERT:

Q. Let's go first of all to the one from New York where you mentioned a thousand persons being released.

A. Okay.

Q. Who was the author of that study?

A. Guy named Kozol, K-O-Z-O-L, published in 1972.

[p. 421] Q. Where?

A. Start with New York. That's the wrong study. Excuse me. Let me find it.

A. Steadman (sp) was the primary author of that study in New York that I referenced.

Q. And do you have the name of the study, sir?

A. No, I don't have the specific article that it's published in; but basically it is called the *Baxstrom* study, named after the legal case that generated it.

Q. And do you know where it was published?

A. No, not the specific journal. I didn't bring that part of the chapter with me that gave the specific cite of that – of the particular journal reference. I could get that for you if you need that. A synopsis of it is–

MS. FOULSTON: Objection.

THE COURT: I'll sustain at this time.

BY MR. WEILERT:

Q. Okay. Is the *Baxstrom* study by Steadman (sp) recognized in the forensic psychiatric profession as an authoritative study of the release of inmates from a mental institution and their dangerousness predictions?

A. Yes, it is. Not just in forensic psychiatry but in psychiatry as a whole.

Q. Would you then tell us the details of that study, please.

[p. 422] MS. FOULSTON: Your Honor, I still object. There's no foundation.

THE COURT: Well, believe counsel is trying to establish some foundation. At this point in time the witness would be able to talk about the details of the study.

MS. FOULSTON: Your Honor, I still object on the basis of irrelevancy. There's been no showing that it is pedophiles. It's not relevant to the basis of this lawsuit. And I object on the basis that there is no foundation. This doctor can't even tell you where the study came from and what year it was published.

THE COURT: Well, I think the objection's somewhat premature at this point in time. He's going to talk about details of the study, which I would presume would include the subject matter and the individuals.

You may continue with your questions and lay the foundation.

MR. WEILERT: Okay.

BY MR. WEILERT:

Q. First of all, the people being studied, who were they?

A. They were a thousand individuals who had been transferred from the New York Department of Corrections to a hospital for the criminally insane in New York.

Q. And the hospital for the criminally insane, were they then released from that?

[p. 423] A. Not by clinicians. They weren't – There was a legal challenge to that transfer, and the court ruled that they had not followed due process in transferring from that institution; and subsequently they had to release a thousand of them.

MS. FOULSTON: Your Honor, object to the legal conclusions, the statements of counsel and the statements of the witness that are not supported in the evidence. No foundation.

THE COURT: In regard to relevancy, I'll sustain the objection at this time.

MR. WEILERT: Do you want me to argue from here; or do you want me to approach the bench, Judge?

THE COURT: You may approach the bench. (At this point there was an off-the-record discussion at the bench, after which the following in the hearing of the jury:)

MR. WEILERT: Your Honor, the whole idea is whether or not psychiatry can predict future dangerousness or future behavior study does deal specifically with groups of individuals who were released, even though they had been predicted to be dangerous to be at large. The State's position that the persons who worked with those who have been recorded to be dangerous, the type re-offense in the future [p. 424] through the terms of the study.

THE COURT: What is standard? How old is the study?

MR. WEILERT: We believe eleven years.

MS. FOULSTON: Your Honor, the problem I've got with this is if you remember the questioning by Mr. Weilert of Dr. Befort, "Name a treatise, name an article, name anything", and there is no foundation for this witness to testify, number one, off of these studies; number two, there is no showing that they are even relevant to

the issues in this case. They could be individuals that – In the Baxstrom study we're talking about people that were civilly committed going from one location to another. They're not from the Department of Corrections, and this guy doesn't even know the name of the studies and can't even cite to the studies. And I'm just not going to agree that he should be able to pull these things out of the air and testify to them.

THE COURT: Give you time to interview the witness, determine whether or not we need a hearing outside the presence of the jury. Since the State's objecting, I think we should go ahead and have a hearing outside the presence of the jury to determine this.

MS. FOULSTON: Judge, if Tom told us that what he was doing was to come in and say you can't predict – If he wants to give his opinion that he can't predict, that's [p. 425] his opinion; but I don't think that he can base it on something with no foundation.

THE COURT: Let's go ahead and have a hearing outside the presence of the jury.

(Proceedings continue in the hearing of the jury.)

THE COURT: Ladies and gentlemen of the jury, I'm going to excuse you back to your jury room at this time.

(The jury exits the courtroom.)

THE COURT: All right. The jury has been excused from the courtroom. As I indicated earlier at the bench conference, I had thought that we should resolve any problems by allowing interviewing of this witness. There appear to be several objections which the State

desires to lodge in regards to some of the evidence or testimony, I should say. That is going to be introduced through this witness. Therefore, at this time, Mr. Weilert, I would ask you to proffer the testimony of this witness in regards to all of these matters.

MR. WEILERT: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. WEILERT:

Q. Okay, Dr. Logan, let's go back to the idea of asking the psychiatrist or psychologist to predict future behavior. You said that historically your professions have been asked to do [p. 426] that. Is that correct?

A. That's correct.

Q. And that at one point in time up before the mid-1960's, your profession thought that that was possible? Is that right?

A. That's right.

Q. Now, as a result of certain studies that were done from the late sixties through say the mid-1970's, that opinion changed, did it not?

A. It did.

Q. Okay. The studies that were done to change the opinion of the psychiatric profession about prediction of dangerousness, what were they?

A. Do you want me to go through them individually?

Q. Yes, sir.

A. The first study was one published by Kozol, K-O-Z-O-L, in 1972. It was a ten-year study that involved 593 male offenders, most of whom had committed a violent sex crime and had been incarcerated at the Massachusetts Center for the Diagnosis and Treatment of Dangerous Persons. All of these individuals had a clinical examination, along with a full psychological test battery, a social history that was verified from multiple sources. 435 of the 593 were eventually released. Is this the kind of information–

Q. (Nods, indicating affirmative response).

[p. 427] A. Okay. Kozol and his fellow staff members recommended the release of 386 of these individuals as non-dangerous and opposed the release of 49 of them as dangerous. The Court decided otherwise in those 49 cases and released them anyway. They then did a five-year followup study measuring how many of these individuals became recidivists. And their criteria was recidivism by committing a serious and assaultive act.

Q. What was the result?

A. The result was that 8 percent of those that they predicted not to be dangerous became recidivists and assaulted someone; 34.7 of those that they predicted to be dangerous committed an assault.

Q. So, in effect, the predictions about future dangerousness were wrong 65.3 percent of the time. Is that correct?

A. That's right.

Q. What other studies occurred?

A. A second study was performed at the Patuxent Institution at Maryland. That is a treatment facility that I have personally visited and talked with the staff there, who conducted a study over a number of individuals who had at least three years of treatment and were brought before the court for release. Staff opposed the release of 286 of these individuals on the ground that they were still dangerous. But the Court went ahead and released them anyway, and they [p. 428] recommended the release of 135 others as being safe. They then followed their progress for the first three years after they were released. Of those that were released by the Court against the staff advice, recidivism rate was 46 percent, that – They had been released directly from the hospital that is, and then 39 percent if they had a conditional release. Of those patients that were also released on staff's recommendation, the recidivism rate was only 7 percent.

Q. So in that study, the psychiatrists' and psychologists' recommendation – pardon me – predictions of dangerous were wrong 54 percent of the time?

A. Between 54 and 61 percent depending on the population that they looked at.

Q. Okay. And what other studies?

A. Steadman (sp) did a subsequent study, at Patuxent, looking at this population again, and found that arrest rates for violent crime over a three-year period for inmates recommended by the staff for release, that is, predicted not to be dangerous was 31 percent that they

predicted they would be violent or recidivate, the relapse rate was 41 percent. There was only a 10 percent difference between the groups that were predicted to be violent and those that were not predicted to be violent.

Q. And they were again wrong somewhere between 60, 59 and [p. 429] 69 percent of the time?

A. That's correct.

Q. When was that study done, do you know?

A. 1977.

Q. And the first one from Maryland?

A. 1972.

Q. Okay. Are there others also?

A. Yes.

Q. Okay.

Q. What's next?

A. Well, the one that we initially started was the *Baxstrom* study. This resulted from a 1966 United States Supreme Court case called *Baxstrom v. Harold*. The specific legal cite on that – Essentially the ruling in that case resulted in the transfer of nearly a thousand persons thought to be some of the most dangerous in the State of New York from hospitals for the criminally insane to mental hospital. He did a report on the followup study on these individuals in 1972. And specific cite is an article by Steadman (sp) and Stevens called "Community Adjustment of the Baxstrom Patients", 1966 to 1970, published in the "American Journal of Psychiatry." I don't have this in my memory.

Q. Okay. What type of followup was done on both – of those thousand persons if were there predictions regarding their future dangerousness?

[p. 430] A. Yes, they did a followup of these individuals. They were all assumed to be dangerous by the fact that they had been in an institution for the criminally insane and by the virtue of the fact that they're being in that institution someone had made a prediction that they would in fact be dangerous. They followed these individuals for four years. Only twenty percent of these individuals were assaulted people either in a civil hospital or community over the next four years. Only 3 percent of them were ever sufficiently dangerous to be returned to the hospital for the criminally insane during that same four years. And they also looked at then for two and a half years out in the community smaller group of these 121 patients. They found only 9 or 8 percent were convicted of a crime, and only one of those convictions was for a violent act.

Q. and that would once again indicate that there was at least an 80 percent prediction of dangerousness?

A. That's correct.

Q. What other studies?

A. There was a study by and Steadman (sp) in 1976. It involves 257 defendants who had been found incompetent to stand trial New York State in the years 1971 and 1972. All of them were examined for determination of dangerousness by two psychiatrists. 60 percent were predicted to be dangerous, and 40 percent were predicted to be non-dangerous. [p. 431]They subsequently follow

them from the hospital in the community during a three-year period. They found that initially during the first few months of hospitalization, those that were predicted to be assaulted were slightly but insignificantly more likely to be assaultive. 46 percent versus 36 percent. After their release, they looked at their re-arrest for any kind of crime, and they found that 49 percent of the people that had been predicted to be dangerous by the psychiatrists were re-arrested for any crime. And 54 percent of the non-dangerous group were re-arrested. So in actuality the non-dangerous group had a higher rate of recidivism than the dangerous group did.

Q. And once again showing that the prediction of dangerous behavior in the future is at least 51 percent wrong?

A. Yes.

Q. Any further studies in that group?

A. No, those were the studies principally that were cited and summarized and Monahan had a great deal of information, called the "Criminal Prediction of Criminally Violent Behavior" by John Monahan, who is a psychologist at the University of Virginia.

Q. Miss Foulston is holding the monograph you are referring to?

A. That's right, sir.

Q. Is that recognized as a learned treatise in the field of [p. 432] psychiatry?

A. Yes, it is and in general psychiatry. It's not forensic. This actually had to do not with the practice of

forensic psychiatry as much as it did general psychology. Many times general psychologists and psychiatrists are confident as to make these predictions. John Monahan himself is a psychologist.

Q. And in addition to the studies that you have just told us about, are there other predictions of dangerousness in the literature specifically regarding sex offenders?

A. Yes, there's a whole host of them.

Q. And can you tell us first of all what time period we would be talking about?

A. I've reviewed a number of studies that stretch all the way through the early 1960's up through the early nineties; approximately 60-some such studies.

Q. And have you summarized your findings in those studies?

A. Yes, I've at least for myself made a little graph that reports some of the more salient characteristics of each of the studies.

Q. Let's start off with, if you can, first of all generalize for us the information contained as far as the ability to predict re-offense in sex behavior pardon me in sex offenders.

A. Very few of these studies if any of them have really [p. 433] tried to predict re-offense and sex offenders per se. Instead there are more outcome-studies patients who have either been treated or those who have not been treated and then followed for a certain number of years, which vary in length anywhere from six months up to as long as fifteen years. In some cases recidivism

has been measured in these studies generally by re-arrest rates; in some cases re-conviction rates; in some cases supplemental and by confidential questionnaires. Very few small, proportional studies.

Q. And can you tell us what range the recidivism rates are for those who are untreated sex offenders?

A. Okay. For those that are untreated – And I looked at 22 studies that had some information about that. The range was – would vary dramatically; 43 percent was the high; 32.8 percent was the low.

Q. How about those that were treated?

A. The average of those who were treated, recidivism rate was 12.56 percent. The range anywhere from 6 percent to 37.5 percent for those who were treated.

Q. What about for the untreated, what the average was? I don't think I asked that?

A. The – 15.1 percent of the untreated group. This is really lumping quite a bit of studies that have a lot of that, add a lot of variables together. There was also eleven [p. 434] newer studies of treated sex offenders, and recidivism rate there was 14.9 percent.

Q. So it would be clear that all of the studies regarding ricidivism and sex offenders would show, first of all, the average to be well below 50 percent? Is that correct?

A. Yes. And, in fact, it's quite unusual to find any recidivism rate that approaches 50 percent.

Q. And the studies that that information is taken from, you have had an opportunity to review them?

A. Yes.

Q. And are they published in journals dealing with either general psychiatry or forensic psychiatry?

A. Some of them are published in those journals. Some of them are published in journals that have to do with the area of criminology.

Q. Do you recognize them as authoritative documents regarding the information contained in them?

A. Yes.

Q. In your field of forensic psychiatry as well as general psychiatry, do you depend a great deal upon published studies to enhance your knowledge and keep you updated?

A. Yes, we do.

Q. In general can you tell us what's required before a study is published?

A. The study is submitted to a journal, and the editors' of [p. 435] that journal do what they call a process of peer review, or they screen the study for the proper methodological design and pertinance of the information and whether they think the information is reliable. And they have the ability to either accept the article for publication or refuse to publish the article.

Q. So by the time it is published, it's not only – It's already accepted by the publication itself or the editors board of publication?

A. Yes, authoritative in terms of being a relevant piece of the research, one that was methodologically sound and had valuable information to convey.

Q. And would you say that both general psychiatrists and forensic psychiatrists rely upon the information contained in those journals in formulating opinions?

A. Yes, they do.

Q. Based upon the history of your education, your experience, the articles and materials that you have reviewed, do you have an opinion to a reasonable degree of medical certainty whether or not future dangerousness of a sex offender can be predicted?

A. Yes, I do have an opinion about that.

Q. Okay. And let me add one more variable. Do you feel that it can be predicted to a standard of more likely than not or more than fifteen percent?

[p. 436] A. Yes, I have an opinion about that as well.

Q. Okay. What's the opinion about the latter?

A. My opinion about the latter is, given the nature of the current research available to us, I do not think we are able to say, given a certain individual, that their future proclivity to re-offend and commit any sex offense can be predicted more likely than not for more than 50 percent.

Q. And in fact is the American – You mentioned that you are a member of the American Psychiatric Association?

A. That's correct.

Q. And that's also the group responsible for the publication of the DSM Statistical – pardon me – Diagnostic manual, is it not?

A. Yes, it is.

Q. Has the American Psychiatric Association taken a stand regarding psychiatrists predicting future behavior or future dangerousness?

A. Yes, they have.

Q. Would you tell us what that is?

A. The position is that a psychiatrist should only do that in conjunction with educating his various – or whoever is requesting information about the degree of reliability with which that can be done.

Q. And if you were permitted to tell the jury the reliability of prediction of dangerousness or re-offense of [p. 437] sex offenders, what would you want to tell them?

A. In general?

Q. Yes.

A. Talking about sex offender as a category?

Q. Just talking about sex offenders.

A. Generally what we know from re-offense rates, it's unlikely whether treated or untreated that they will re-offend at a rate higher than 50 percent. Studies consistently show that the recidicism rate is much less than 50 percent, either with treatment or without treatment. So based upon that – of individuals in that category, you might be able to predict that some groups would re-

offend at a higher rate than others; but you would not be able to predict any one individual based on that designation would be more likely than not to re-offend.

Q. Do you have an opinion to a reasonable degree of medical certainty whether or not a psychologist rather than a psychiatrist would be in any better position to make such a prediction?

A. The standards for assessment are the same for these type of individuals in both disciplines, and there would be no difference between them in their ability to predict.

Q. In the literature and in your experience, are there factors that have to be taken into consideration as far as assessing risk of re-offense?

[p. 438] A. Yes. There are a number of factors that are examined and which you would examine a sex offender.

Q. Are there any of those factors that can be quantitatively analyzed to say if this is present, then there's a 5 percent higher arrest rate or anything of that nature?

A. In order to do that, you would have to compile a massive number of studies to get a large enough individual to make significant statistical findings. There are a number of things that can increase the risk of somebody re-offending; by what degree, we don't have the sophistication to say.

Q. Excuse me. Is there a difference in your opinion between a clinical evaluation of whether a person should be placed into treatment and a prediction of whether or

not that person is going to re-offend more probably than not?

A. Yes.

Q. Okay. Would you explain that for us?

A. In a clinical decision, you're simply advising the individual what would be in their best interest. Certainly if somebody has a risk of 30 percent, approximately, or 25 percent of committing some type of terrible crime, it's either in society's best interest or that individual's best interest that he leave treatment. But that's different than saying that individual will commit a certain act more likely than not, higher than 50 percent level. In other words, [p. 439] there are individuals who have a risk as low as 5 or 10 percent. But if it's committing a serious criminal act, I'm going to recommend clinically that they receive treatment.

MR. WEILERT: Your Honor, I think for our purposes that's all the questions I would have. I don't want to imply that if Dr. Logan were testifying before a jury that that would be the specific limits of what I would ask him, but that's the general – certainly the general areas.

THE COURT: All rignt.

THE COURT: Ms. Foulston.

CROSS EXAMINATION

BY MS. FOULSTON:

Q. Dr. Logan, you indicated that you are familiar with the text called "Predicting Violent Behavior, an Assessment of Clinical Techniques", by John Monahan,

which is a monograph that was published by the Sage Library of Social Research in 1981. Is that correct?

A. That's right, sir.

Q. And, in fact, as you were reading some documents, I read along with you. The pages that were taken directly from that book, pages 72 through approximately 80, dealing with outcomes of studies of clinical predictions involving the Kozol study, the Steadman (sp) study, the Baxstrom study, et cetera. Is that correct?

A. Actually, we've got different versions of the same [p. 440] thing. Monograph that I have got is "Clinical Prediction of Violent Behavior." It's like he wrote the same thing two places. My edition has pages 44 through 47.

Q. When I was reading through the language in this book – This would be the same author, would it not?

A. Same author, same ideas.

Q. Same materials?

A. Right.

Q. Same studies?

A. Right.

Q. Now, I'm going to direct your attention to the nature of this particular monograph; and it does say it is on "Prediction of Violent Behavior", does it not? And violent behavior has been defined by the author as that which he has confined his monograph or study to. Is that correct?

A. That's correct.

Q. And if you would please excuse me while I quote, in this monograph says Sted- – says Monohan, at page 26, "Violent behavior will be defined as by" and correct me if I pronounced the name incorrectly – "Megargee, 1976"?

A. Let me read what you are reading, and I'll look at it.

Q. Are you familiar with the name "Megargee"?

A. Megargee.

Q. That's what I said. I'm not pronouncing it correctly.

A. Okay.

[p. 441] Q. In this monograph, says, "Monahan Violent Behavior will be defined as Maegargee 1976, page 12, how he has defined it." Quote, "Acts characterized by the application or over threat of force which is likely to result in injury to people", end quote. Injuries shall be taken to mean physical injury. The notion of threat – in quotes – is included so that the definition will encompass armed robbery or other situations in which injury is threatened but not accomplished. The notion of, quote, "likely", unquote, is included so that a shooting at someone will be considered violent, even if the bullets miss. As Maegargee states, quote, "The use of the term includes but is not restricted to such criminal acts such as homicide, mayhem, aggravated assault, forcible rape, battery, robbery, arson, and extortion. Criminal behaviors not likely to result in injury to persons such as non-coercive thefts or vandalism are excluded, as are business practices,

which although injurious to people, do not involve the application of force. Do you recall reading that in Monahan's monograph on violent behavior?

A. I probably do. My understanding of what he was measuring in that was essentially –

Q. I just asked you, sir –

A. Do I recall personally reading that at some point? No, I don't personally recall reading that at some point. I [p. 442] don't have any reason to doubt what you said, and that is my understanding of what he was measuring.

Q. When Monahan is measuring and predicting violent behavior, he is doing it as Megargee would do it in those terms. And mayhem is like cutting off somebody's arm. That would be mayhem?

A. Some kind of physical assault.

Q. Physical assault. And so all of these are very forcible, violent types of crimes?

A. Right. The only sexual crime included in there is rape.

Q. Forcible rape?

A. Right. Most rapists –

THE COURT: Excuse me, Doctor. We're trying to take a record here. The reporter can only take one witness and attorney talking at one time, one person talking at a time. So please wait for the completion of the question before making a response. All right?

A. Yes, sir.

BY MS. FOULSTON:

Q. Okay. So then it would be a fair assessment, would it not, Doctor, that this book by Monahan upon which you rely and the studies that you have cited is not directed towards recidivism rates of pedophiles?

A. That's correct.

Q. When you talk about the recidivism rates of child [p. 443] molesters, as you have indicated from unidentified studies that you have talked about, those are based on re-arrest and conviction. Is that correct?

A. Primarily but not exclusively.

Q. And would you agree, Doctor, that most likely re-conviction rates underestimate the rate of re-offending, and therefore it's highly recognized that only a fraction of sexual offenses against children result in the offender being re-arrested or convicted, so that the statistics may be skewed by that lack of information?

A. That's the general consensus in the field; yes, it is.

MS. FOULSTON: Thank you. Your Honor, I submit that the testimony of this witness is irrelevant and immaterial. The studies that he has cited – and I have the book for the Court – deal with offenses that are not germane to the issues in this case. They are not studies of recidivism of pedophiles. They are studies other than what we are asking this jury to look at. An expert is to bring to the jury or to elucidate those issues that would be helpful for a clearer understanding. All Dr. Logan can

do is to confuse the issues by talking about recidivism rates for individuals who engage in mayhem, in homicide, in aggravated assaults and in armed robberies; and those are not relevant. We don't know if these studies involve threats on the president's life. That's an area he's been involved in – or [p. 444] whatever. But the bottom line is this witness should not be permitted to testify before this jury because the information he has is not relevant to the case at hand, and his opinion would only serve to confuse and to give information that is not appropriate in this case. Therefore, based upon this information, the State requests that the witness not be able to testify with regard to his prediction of violent behavior, based on the arguments of counsel. And the State – And, Your Honor, at this time I would tender the book to the Court. If there's any issue, I've read the whole book myself; and I can attest to the fact that there's not a thing in there regarding pedophiles.

THE COURT: Mr. Weilert, do you care to respond?

MR. WEILERT: Yes, Your Honor. The question that is going to be before the jury is whether or not they can predict human behavior at some point in the future. Now, in order to determine whether or not anyone can do that, I think that it's very relevant to look at what has happened in the past where – what situation have psychiatrists and psychologists tried to do that and how they succeeded. It is not in the opinion of the respondent necessary that that information be strictly related to the recidivism rates of sex offenders or even more specifically pedophiles. It all relates to the prediction of human behavior. It is very [p. 445] clear that in the first group of

studies discussed by Dr. Logan that we're talking about here people who have been in close contact with the people making the prediction for far longer than Dr. Befort was ever in contact with Mr. Hendricks; that even with that long-term contact, they were unable to get any closer than 65 percent wrong when they tried to predict if there was going to be any future violent behavior on behalf of these people. In addition, we have – Or Dr. Logan has cited specific studies dealing with sex offenders, and those – And I'm sure if the Court wants to take the time, we can go through and identify all of the articles he summarized. We can have them set forth which articles they are, who wrote them, when they happened and go through all of the details. But the fact is that all of them say that there is a recidivism rate, whether treated or untreated, on the average of 12 to 15 percent for sex offenders. The Massachusetts study cited in the first group was dealing with sex offenders, where the accuracy rates were, I think, 50 – My notes aren't very good – but certainly somewhere well over 50 percent in error as far as predicting future re-arrest and recidivism. The question of whether or not the re-arrest understates the amount of recidivism is something that could certainly be argued; but it is equally clear that there has to be some standard by which to go by. It is apparently well-recognized in the [p. 446] field. That's about the best method there is to predict recidivism or future dangerousness or to look at predictions of future dangerousness. And we would submit that Dr. Logan is very well-qualified to relate his opinion based upon that literature, and we can have him tell the jury the basis for that opinion as

set forth in that literature and the jury's final determination of whether or not they feel that it is possible to predict more probably than not that Mr. Hendricks will re-offend. That's up to them, but we certainly have the right to show the fallacy of a psychologist getting on the stand and saying, "Yeah, it's more probable than not that he is going to re-offend."

MS. FOULSTON: Your Honor, the State's position is very clearly drawn in that his opinions, as I said, I read along as he read along with all of the studies that are contained within that Monahan book – deal not with the specifics of this particular incidence. If they're talking about sex offenders, we can talk about sex offenders as people who are exhibitionists, sodomizers, forcible rapers, those who engage in any kind of sexual abhorrent sexual disorder except pedophilia. Those rates of recidivism have to be as individual as the if the woman is a battered spouse, sets fire to the bed her husband is in. She might not be inclined to kill a spouse again if she doesn't get abused. Therefore, her rate of recidivism as opposed to [p. 447] somebody who goes out and molests and molests and molests and molests – We're not talking about an isolated incidence here. We're talking about apples and oranges. I don't think there's any relevancy. 3.2 to 43 percent of untreated offenders. Are they murderers, homicidal maniacs, armed robbers, people who cut off arms and legs; or are they pedophiles? And this is not relevant nor material, and it's highly prejudicial to confuse the issues with the jury who can truly understand and probably don't even need the doctor to tell them what the word likely to re-offend means in the first place.

THE COURT: Well, at this juncture, I'm going to allow the respondent to put on evidence, limited evidence in regard to these matters. I believe matters raised by the State are matters that the State can properly bring before the jury by way of cross examination to show that there is no basis for the expertise or no basis for the studies. I believe the respondent in the area of human behavior and predictability thereof – I believe the respondent can present evidence, although, I agree with the State the ultimate issue in this case is going to be determined by the trier of fact, the jury. It does not revolve around any expert witness. It revolves around all of the evidence in the case as the jury determines. I will allow the jury to go to lunch. I'm going to recess this case until 1:30, and at

* * *

[p. 465] background for all this stuff. Even though I still object to the ruling, that's what we intend to do.

THE COURT: All right. Ms. Foulston.

MS. FOULSTON: I think counsel's correctly recited the –

THE COURT: So am I safe to say we can bring the jury back in?

MS. FOULSTON: Well, you're safe to say that I don't know what my objections will be yet, Your Honor.

THE COURT: Very well. Then I'll ask Mrs. Soper to bring the jury back into the courtroom.

MR. WEILERT: Should Dr. Logan retake the stand?

THE COURT: Yes.

(The jury returns to the courtroom, and Dr. Logan returns to the witness stand.)

THE COURT: I hope you folks had a pleasant vacation in Shangri-la. We are ready to resume.

Mr. Weilert.

MR. WEILERT: Thank you, Your Honor.

REDIRECT EXAMINATION

Q. For the record, you're the same Dr. Logan that was testifying earlier this morning before that short break?

A. Yes, that's correct.

[p. 466] Q. And you realize you're still under oath, sir?

A. Yes.

Q. Okay. I believe kind of where we will left off was you were discussing some studies from the 1960's and the seventies regarding the prediction of violent behavior. And those are gathered together in a monogram by a gentleman named Monahan in "Clinical Prediction of Violent Behavior." Is that correct?

A. It is correct.

Q. Would you summarize for us the conclusions reached as to the result of those studies regarding the prediction of violent behavior?

MS. FOULSTON: Same objection, Your Honor.

THE COURT: All right. I'll note your objection for the record.

A. Psychiatrists tending to make long-term prediction of dangerous were right in no more than one out of three cases.

BY MR. WEILERT:

Q. Following the studies contained in that – pardon me. In addition to the studies contained in that document, are there other studies which deal with the prediction of recidivism for pedophiles?

A. Yes, there are.

Q. Okay. Have you had occasion to make a compilation of some of those studies?

[p. 467] A. Yes.

Q. And I believe you've actually compiled a list of about 60 sex offense studies, sex offender studies; and about 17 of those deal with pedophiles. Is that correct?

A. Somewhere in that nature, yes, exclusively or mostly pedophiles.

Q. Okay. Excuse me. Can you give us – once again summarize for us the findings of those studies regarding the prediction for re-offense by a pedophile?

A. Although the studies varied in the length of time they followed someone after they were released from treatment, none of the studies found that the re-offense rate exceeded 50 percent. The average percentage of individuals who re-offended was – with treatment was about

15 percent. The range went from as low as 3 percent to as high as 37 1/2 percent. Studies that look at people who had not undergone treatment, the average re-offense rate was about 17 1/2 percent; and the range went from 10 percent to 40 percent.

Q. Based upon those studies, sir, do you have an opinion to a reasonable degree of medical certainty whether or not a psychologist or a psychiatrist can predict the behavior – pardon me – can predict whether an individual is likely to engage in a sexually violent act in the future?

A. I do believe that there are risk factors that help you identify certain individuals that are –

[p. 468] MS. FOULSTON: Objection. Not responsive to the question.

THE COURT: Well, it will be sustained.

BY MR. WEILERT:

Q. Question, sir, is, based upon all of your previous experience, the literature that you have reviewed, do you have an opinion as to whether or not a psychiatrist or psychologist can accurately predict to a standard of more probable than not whether an individual is likely to engage in a violent sexual act in the future?

MS. FOULSTON: Objection to the form of the question, and it misstates the law that's applied to the case with regard to a finding of sexual predation.

THE COURT: Mr. Weilert, can you couch your question to conform to the statute?

MR. WEILERT: That's what I was intending to do. Thank you.

BY MR. WEILERT:

Q. I'll try one more time. Dr. Logan, do you have an opinion to a reasonable degree of medical probability or certainty, based upon all of your experience and the research that you have talked about, whether or not a psychologist or psychiatrist can make a prediction that a person is likely to engage in predatory acts of sexual violence, with the terminology "likely to" meaning more than 50 percent?

[p. 469] MS. FOULSTON: Your Honor, I object. That's not the law.

THE COURT: Well, I'll sustain the objection at this juncture.

MR. WEILERT: If we eliminate the portion where I said "define more likely to", do you have an opinion?

MS. FOULSTON: I object and ask that counsel restate the question without the additions and deletions to the witness. Just one question with a yes or no.

THE COURT: Mr. Weilert, would you go ahead at first please ask him in accordance with the language of the statute whether or not he has an opinion.

BY MR. WEILERT:

Q. Doctor, do you have an opinion held to a reasonable degree of medical probability or certainty whether or not a psychologist or a psychiatrist can accurately predict

whether or not a person is likely to engage in the predatory acts of sexual violence?

A. Yes, I have an opinion.

Q. What is that opinion?

A. My opinion is that the a psychiatrist or psychologist cannot predict whether an individual is more likely than not to engage in a future act of sexual predation from existing information we now have.

MR. WEILERT: I believe that's all I have. Thank [p. 470] you, Your Honor.

THE COURT: All right. Cross examination.

MS. FOULSTON: Thank you, Your Honor.

RECROSS EXAMINATION

BY MS. FOULSTON:

Q. Dr. Logan, I'm Nola Foulston. I believe we've had an opportunity to meet in court, and I want to ask you some questions regarding some of the opinions and the statements that you have made during court today. Do you understand the line of the questioning, sir?

A. Yes, I do. Thank you.

Q. Thank you. We had visited earlier in court with regard to Monahan's monograph called "Predicting Violent Behavior", a copy of that book I have. And are you familiar with that text?

A. Yes.

Q. And I believe that part of your testimony was the fact that this particular book said that only one in three predictions of violent behavior could be within any sense of the word accurate? Is that right? Is that correct?

A. Generally, yes, that's correct.

Q. In other words, if you had to strain all of the material from Monahan out, you would get that nugget of information; and that is the information that you gave earlier in your testimony? Isn't that correct?

[p. 471] A. Regarding predicting future violence, that's correct.

Q. All right. And Monahan's book, would you agree, is based upon the violent behavior definition that he gives from another psychologist named – And you are going to have to help me out with this – Megargee?

A. Megargee.

Q. I'm sorry. I can't say that. Is that correct?

A. Yes.

Q. So in this book Megargee talks about homicide predictability. Is that correct?

A. That's one of the things in his definition as an act of violence, yes.

Q. Is that the same motivation as pedophilia?

A. Depends on the pedophile. Generally, no.

Q. Okay. Megargee talks about mayhem. Can you tell me what mayhem is?

A. I'm not sure what Megargee means by mayhem. Generally my interpretation of it in lay sense means an act of uncontrolled violence, rage.

Q. Mayhem – let me help you out – means cutting off an arm, a nose, a limb, under the common law. Is the motivation of mayhem the same as the motivation of a pedophile?

A. No.

Q. Megargee deals with aggravated assault. Do you know what aggravated assault is?

[p. 472] A. Yeah.

Q. And would it be fair to say this would be assaulting, striking at another while armed with a deadly weapon?

A. Yes.

Q. That's the Kansas law definition? Is that correct?

A. It is.

Q. Is that the same motivation as one would find in an act of pedophilia?

A. No.

Q. Megargee also talks about the the crime of battery.

A. Yes. I didn't know if it was a statement or question. Yes, that's right.

Q. And do you understand that term to be the unlikely or the unlawful application of force to another?

A. That's correct.

Q. Punch someone in the nose would be a battery, would it not?

A. Yes.

Q. All right. Is this the same motivation that you have with a pedophile?

A. No, generally not.

Q. He also talks about robbery. Is that the same motivation as pedophilia?

A. No.

Q. He also defines it as arson. Is that the same [p. 473] motivation as pedophilia?

A. There maybe some overlapse but generally, no.

Q. He talks about extortion. Is that the same motivation as pedophilia?

A. No.

Q. He also discusses the forcible rape. Do you understand that term?

A. Yes.

Q. Do you understand this forcible rape to be a crime of violence versus a sexual offense?

A. Yes, I do.

Q. Is forcible rape the same as pedophilia?

A. No.

Q. So the definitions that are used by Megargee that are adopted by Monahan and the basis upon which this whole book is written are based on the violent and predictable behavior of people who have been convicted of homicide, mayhem, aggravated assault, battery, forcible rape, extortion, arson and robbery. Is that correct?

A. No, not if you mean that they've been convicted of that. It's an attempt to predict violence using one of those perimeters.

Q. That's the general nature of his –

A. Right.

Q. Right – his book. So his book is not about people such [p. 474] as Mr. Hendricks, who is a pedophile?

A. No, it's not.

Q. Thank you. You're not saying that there is never an occasion when the risk of an individual may be assessed. Is that correct?

A. Sort of a double negative. Yes, I am saying that there are situations when you can't assess the risk of an individual.

Q. And, in fact, as a psychiatrist, you have engaged in the prediction of a risk of individuals as part of your practice, do you not, when you can?

A. Sure. As part of my job as consultant at Larned State Hospital and Osawatomie State Hospital, I specifically have to do that.

Q. Certainly you are called upon all the time to examine whether a person may perform or do something, based on what you know about them. Isn't that correct?

A. That's right.

Q. And I think what you've told us here in court today when the smoke all clears is that if based on all of these different studies that you have relayed, the 17 dealing specifically or in part with people who are called pedophiles, that the percentages are somewhere between 3 percent and 40 percent of re-offenders. Is that correct?

A. That's correct.

[p. 475] Q. All right. So not even the experts can agree on that. Would that be a fair statement?

A. No, you have – That assumes that all these studies are the same, when in fact there is a wide of measure – wide range of treatments they're exposed to. Some of these are actually designed to see which treatments are most effective.

Q. There's different factors that would enter into different reasons why a percentage might be as low as 3 or as high as 40? Isn't that correct?

A. Yes, it is.

Q. And these studies – and if I am correct in my review of your literature and information, these deal with individuals who have been previously convicted, studied for a period of time, re-offend and are re-arrested or convicted? Isn't that correct?

A. The majority of those studies, that's correct. There are some other measures they may re-offend, but that's the main one.

Q. So, in other words, in order to get your number in the study and to be part of the percentage, you had to be caught? Isn't that correct?

A. Not in every case but in most cases that's – that's correct.

Q. Now, you're familiar with long-term recidivism of child molesters, you've indicated. Is that correct?

[p. 476] A. Yes, I am.

Q. And are you also familiar with the fact that these re-conviction rates may be underestimated?

A. People who have done research on this generally think that that maybe [sic] the case. We can't prove it, but they think that probably under-reported.

Q. And the reason that it's under-reported is because that only a fraction of the sexual offenses against children result in the offender being convicted, because in many of the instances they are not caught. Isn't that correct?

A. Well, that's true. Some of these states, though, I might add, deal with only conviction rates.

MR. WEILERT: Your Honor, he can answer the question.

THE COURT: Well, that question called for a yes or no answer. He can expand on another examination.

BY MS. FOULSTON:

Q. They don't get caught, do they?

A. Some of them don't.

Q. Dr. Logan, you have not personally examined Mr. Hendricks. Is that correct?

A. That's correct, I have not.

Q. In fact, have you ever even spoken with Mr. Hendricks?

A. No.

Q. What have you reviewed in connection with your [p. 477] preparation for this case as it relates specifically to Mr. Hendricks?

A. The only thing relates specifically to Mr. Hendricks was some testimony offered by Mr. Crask in an earlier hearing in this matter and the two reports prepared by Dr. Befort.

A. I just said Befort. Like your Megargee, I have to watch myself how I pronounce it.

Q. Dr. Befort, I think, is correct. So you have not had the opportunity to talk with Rose Loux, have you?

A. No.

Q. Have you had the opportunity to talk with Roger Morris?

A. No.

Q. What about Constance Herzog?

A. No.

Q. What about Steven McPherson?

A. No.

Q. What about David Erbeznick?

A. No.

Q. Have you talked to any young men from Wichita that were the victims of Mr. Hendricks' molestation?

A. No.

Q. Have you visited with any law enforcement officers regarding the characteristics and propensities other than what you referred in Dr. Befort's report?

A. No.

[p. 478] Q. And you have not conducted or done any psychological or psychiatric testing, have you?

A. No, I didn't evaluate this fellow. I just am testifying about recidivism.

Q. You have from time to given statements and lectures regarding recidivism?

A. I have.

Q. And in your papers and documents, you actually have some prepared papers and documents that you use. Is that correct?

A. There is a lecture that I provided that I gave the psychiatric trainees at Menninger.

Q. And I believe it is psychiatric workshop and legal regulation of clinical treatment. Is that correct?

A. Yes. It deals with a lot of things, primarily involuntary commitment.

Q. And I believe you pointed to pages 19 through 25 as those regarding volition and prediction of dangerousness. Is that correct?

A. Yes, it is.

Q. Reflecting your attention to those particular pages, if you would, Doctor, so that we're both on the same wavelength here –

A. I'm locating my copy as we speak.

Q. Start at 19.

A. Got it.

[p. 479] Q. Is it a fair statement so say that they are are many factors that one must consider in assessing the risk that an individual poses to society at large?

A. Yes, that's correct.

Q. And that in assessing risk, one must look at a number of different factors?

A. That's correct.

Q. And that many times people make mistakes because they don't look deeply enough at the individual. Is that correct?

A. Well – or get ancillary data, too.

Q. And it would be important in order to predict dangerousness. And I believe at page 22 you outline a formula for the prediction of dangerousness, do you not?

A. I do.

Q. And you include that it is important to know the prior history of violent acts. Isn't that correct?

A. Yes. This is the single best predictor of what he will do in the future.

Q. And so would it be a fair statement to say that behavior predicts behavior?

A. With certain modification, that's true.

Q. It would also be important to have a diagnostic assessment of an individual. Isn't that correct?

A. Yes.

Q. It would also be very helpful to have their mental state [p. 480] and identify if they're hostile, agitated, tense, delusional suspicious, grandiose, hypervigilant, hallucinating, et cetera. Is that correct?

A. Yes.

Q. It's very important as well to look at the treatment variables, is it not?

A. Yes, it is.

Q. And one of the gravest factors that one must look at is the motivation of an individual to change. Isn't that correct?

A. That certainly is important, how willing he is to comply with treatment or seek treatment or utilize it.

Q. Certainly. If a person is going to come in and take treatment, that would be important, wouldn't it?

A. Yes, I think it is important.

Q. And a person who says he doesn't need treatment would send up a red flag for you, would it not?

A. Sure.

Q. And it would be in very important for you to look at family support, would it not?

A. Yes, the situation to which the individual is going is always important.

Q. The social issues regarding the individual would be very important?

A. Yes. Whether he has a job – is certainly helpful to [p. 481] know that.

Q. One of the things you list is the history of compliance with outpatient treatment. That would be very important, wouldn't it?

A. Yes.

Q. So, in other words, a person that was told to go to treatment and refused to go, that would be significant, wouldn't it?

A. Yes, it would.

Q. Would that be a red flag to you on a predictability of someone's future dangerousness if you knew that they would not comply with outpatient treatment?

A. It would. But once again if we talk about the 50 percent criteria we have to study, the untreated pedophiles show they don't re-offend at more than 50 percent, either. But yes, it does indicate an increased risk.

Q. Would it be an increased risk that a person was a loner versus someone gregarious, that spent a lot of time with other people, peer relationships?

A. Not in relationship to pedophilia. Now, this list prepared for people trying to predict the things on that list, as you said earlier, wasn't relevant. But in terms of pedophilia, it's not as important as might be some other areas.

Q. You're not as concerned if somebody is a loner as [p. 482] opposed –

A. Certainly not all loners molest children and not all gregarious people refrain from it. So it's not a very good predictor.

Q. Would it be a very good predictor, Doctor, to know the environment to which the patient would be discharged?

A. If that environment has played a role in his offense in the past, it certainly would. And certainly if a person has – You want to keep track of things, ages of the children – might be disposed to where he might be living in relationship to grade schools, what his activities might be potentially with children; things of those nature, you would wants to know.

Q. Well, if you were told, Doctor, that, for example, a person might be paroled to a halfway house, say, that was right across the street from a junior high school, would that cause you a little concern?

A. Not only cause me concern – I looked at cases where they were going to do that and told them they they shouldn't.

Q. Nevertheless, that would be a red flag that you would consider in determining the risk?

A. Well, the way I view it, it's a risk you don't have to take, so why take it?

Q. And the proximity to potential victims or potential victim pool, would that be important to you in analyzing an [p. 483] individual's risk assessment for future dangerousness?

A. It would be one of the things I'd look at. Certainly you can't guarantee that anybody is gonna be totally out of contact with children, but certainly how frequently they might come in contact with them is a factor.

Q. Doctor, turning to page 23, you have at number 12 the decision table for analyzing the risk of releasing a patient, do you not?

A. Yes.

Q. And this is a progressive list that you would ask if you were evaluating someone; to each question, if you receive a response, it gives you instructions on where you should go with that response. Is that correct?

A. Yes. The list isn't progressive, by the way; but it is a list, yes.

Q. It has some very important factors?

A. It's actually – There's a citation on the next page of who prepared this, and it's just sort of a decision tree for releasing primarily psychiatric patients not pedophiles. But I thought it was helpful.

Q. But, in other words, you wouldn't have taught this to people if you thought it was garbage, would you?

A. I don't think it's garbage. I think they're good issues.

Q. Let's start then. Good. The first thing you said was, [p. 484] if you want to analyze the risk of the patients, number one, did admission symptoms relate to violence or threats of violence. And that's important, isn't it?

A. Sure.

Q. Then you have, number two, does the patient have a history of violent behavior; and it says if you check "yes" go to number three, right?

A. Right.

Q. Okay. Then you go to three, and it says, "Does the patient have a history of arrests or violence before age fifteen?" If "yes", patient's already in a high-risk group, it says, does it not?

A. Right?

Q. Says go on to number 4. Is that correct?

A. Right.

Q. Then when you got to number 4, it says, "Have the patients admitting symptoms been adequately treated?"

A. That's correct.

Q. And it says, "If 'yes', go on to question number 5"?

A. Well, no, it doesn't. It says "Stop here." It says, "He can't be released."

Q. It says if the answer is 'yes' –

A. Yes, go on to 5, yes, that's correct.

Q. If 'no', what to what do you do?

A. Don't release them.

Q. Number 5, let's go on, Doctor; and it says under number [p. 485] 5, "Is the patient likely to stay on medications or other treatment?" And you said "If the answer to this is 'yes', then you should go on to the next question." Is that correct?

A. Right.

MR. WEILERT: Your Honor, I object. At this point I think Dr. Logan said this list was made to be used with people who were going in for psychiatric care and treatment, not for a pedophile; and I don't think it's relevant at this point.

THE COURT: Could you clarify that point, Mrs. Foulston.

BY MS. FOULSTON:

Q. Dr. Logan, is this information the type analysis that one goes through in determining risk?

A. With certain groups of patients, yes, there are a number of other things there that are risk factors with pedophiles more specific to that diagnosis that would be much more refined than that.

Q. But this would be an overview, would it not?

A. Some of the things here don't really itf [sic] pedophiles really well. This whole thing about medications. Some people treat pedophiles with medications but in general many programs do not and don't even require that. This would be something very relevant for a person about schizophrenia, for [p. 486] example.

Q. Let's back up to number 4. It says, "If the patient's admitting symptoms have been adequately treated" – if you have a pedophile who's never been treated, would that be a concern?

A. Sure.

Q. All right. And would that fall into number 4? "Have patients admitting symptoms been adequately treated?"

A. You would have to say that they haven't been addresssed [sic].

Q. That's right. So if that's the case, the patient shouldn't be released. Is that correct?

A. Well, certainly not from a psychiatric facility, if that's your goal to treat them, sure.

Q. Thank you. On number 5, let's eliminate the use of the word "medications."

A. Okay.

Q. And just say "Is the person likely to stay on other treatment?" And in having that in mind, it says, "If, yes go on to question 6." Would you agree, doctor, that if the answer is no and if you knew the patient was not motivated to treatment and had a track record of refusing

treatment and failing to go to treatment and just quite frankly didn't want treatment, would you then agree that the patient should not be released?

MR. WEILERT: Your Honor, I object once again. [p. 487] I think Dr. Logan said these don't really apply to pedophilia. It's a situation where we're talking about somebody going into a psychiatric hospital or being released from a psychiatric hospital. That's not in issue.

THE COURT: Well, the doctor can couch his answer in those terms, Mr. Weilert. He can make it clear for you.

BY MS. FOULSTON:

Q. As this would relate to pedophiliacs?

A. Well, certainly if a pedophile is in for treatment from a program or hospital, if the man isn't likely to continue followup, I'm not going to recommend his release from the program. But if I'm giving a criteria asking to predict more likely than not that this guy is going to re-offend, I can't say. I know if he didn't come to my treatment facility at all, just walked out to the community, have a less than 50 percent chance of re-offending. So you're dealing with a clinical decision here versus a prediction kind of decision. The two are different.

Q. Do you use common sense at all in your practice?

A. I sure try to.

Q. Okay. Let's just use a little common sense, then.

A. Okay.

Q. Dr. Logan, if you had an untreated pedophile who had offended repeatedly for thirty-eight years, would you have [p. 488] him babysit your children?

MR. WEILERT: Objection, Your Honor. That's irrelevant. The question is, in the wording of the statute, whether he is likely to re-offend. Dr. Logan has answered that question.

THE COURT: Well, I'll sustain the question based upon the form of the question. Would you rephrase the question.

MS. FOULSTON: Sure I will.

BY MS. FOULSTON:

Q. Dr. Logan, do you believe that an untreated pedophile who's committed acts for thirty-eight years is safe to be with small children?

MR. WEILERT: Objection, Your Honor. It's irrelevant. The question is whether or not he is likely to commit an offense in the future.

THE COURT: I'll overrule at this time.

A. If his chance of molesting that kid is 30 percent, that's too high for me personally.

BY MS. FOULSTON:

Q. Thank you. Doctor, you have indicated, I believe, in discussion that pedophilia is a crime of opportunity. Is that correct?

A. Many times, yes.

Q. Given the opportunity, a pedophile will perform the act. [p. 489] Is that correct?

A. Depends on some other variables, like whether he's been treated or not, what his motivation – how afraid he is of re-incarceration, a number of factors that modify that; but he may be tempted to.

MS. FOULSTON: Thank you. I have nothing further.

THE COURT: Redirect.

MR. WEILERT: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. WEILERT:

Q. Doctor, the document that Ms. Foulston was talking to you about, what was the purpose for your putting together that document?

A. Basically to train residents who are often in their first years of dealing with psychiatric patients, many of them, in fact, being at Topeka State Hospital, some issues to think about in terms of making release decisions about the patients, primarily schizophrenics that are in the hospital.

Q. Are you talking primarily about people who release decisions about people who have been committed for treatment or the act for commitment of people who are mentally ill?

A. Yes, exactly. That's the whole focus of this seminar is to help them with these kind of issues.

Q. Let's talk about that for a a little bit. First of all, [p. 490] what is the standard to be used for admitting someone for treatment under that act?

MS. FOULSTON: Your Honor, I object to the relevancy on that issue. There's a motion in limine.

THE COURT: I'm going to have to sustain the objection as far as this doctor testifying about admission for treatment under an act. If I misunderstood your question –

MR. WEILERT: Your Honor, Ms. Foulston has asked questions about the treatment decisions listed in this act – or pardon me – in this document prepared by Dr. Logan. My question to him is aimed at determining whether or not the treatment decision and admission decisions and release decisions that he's addressing in this document have anything at all to do with the statute that we're dealing with in this lawsuit.

MS. FOULSTON: Your Honor, may we approach the bench?

THE COURT: Yes, please approach.

(The following proceedings were had at the bench, outside the hearing of the jury.

MS. FOULSTON: This document was given to me by Dr. Logan specifically in request to his testimony regarding prediction of dangerousness, and that's what he [p. 491] gave me.

MR. WEILERT: And that was what she requested. It doesn't say anywhere in it in regard to a prediction of whether or not he's likely to re-offend.

THE COURT: Well, the problem I have, I think you're asking this doctor to make some kind of legal interpretation as to whether or not this says "the act." I'm going to sustain the objection, but that question is being asked. I want you to rephrase the question.

MR. WEILERT: I will. I will simply ask his understanding of the standards for admission. Would that be all right?

MS. FOULSTON: Isn't there a motion in limine?

THE COURT: Are you talking about the regular care and treatment?

MR. WEILERT: Care and treatment.

THE COURT: Well, we're not dealing with that act. I would rather you would ask in regards to predictability. The problem is I don't want your witness to get into any legal conclusion. So please put the question to him without a legal conclusion.

MR. WEILERT: I will certainly try.

THE COURT: Okay.

(At this point proceedings continued in the hearing of the jury.)

[p. 492] BY MR. WEILERT:

Q. Now, Dr. Logan, in preparing the document Ms. Foulston was asking you about, that is dealing with treatment recommendations, is it not, for mentally-ill people?

A. Right.

Q. And in the context of an admission decision for a mentally-ill person, what are you looking for?

A. Very recent evidence of the propensity to harm themselves, someone else; inability to take care of their own self needs. And you also are now required to make a decision about whether they're competent to make informed decisions about whether they enter the hospital or not.

Q. And when you say "very recent behavior", what do you mean by that?

A. Looking at the last week to ten days, sometimes shorter than that.

Q. And when you talk about whether – the list that Ms. Foulston started going through – whether the admissions symptoms relate to violence or threat of violence, you are talking about whether in the last week or ten days somebody's hurt somebody or threatened to hurt somebody, aren't you?

A. No. Actually, that list is more geared toward release decisions after somebody has already come into the hospital. Then you're looking at the question of when is it appropriate to let them go.

[p. 493] Q. But it's a release decision about someone who came in because of immediately preceding behavior, is it not?

MS. FOULSTON: Objection to the cross examination by the witness as opposed to his direct examination on his witness.

THE COURT: All right. Your objection leading form of the questions.

MR. WEILERT: I forgot which side I was on.

THE COURT: Leading question objection will be sustained.

BY MR. WEILERT:

Q. Okay. Now, when you say that the list that you started going through with Ms. Foulston deals with a release decision, under what circumstances are the person that you are talking about releasing – What circumstances were they admitted under?

A. Most often for some act of violence combined with their inability to make a competent decision about whether to go into the hospital.

Q. Okay. And all of the factors that Ms. Foulston went into are addressed to a release decision of such a person, are they not?

A. Yes.

Q. That is, she asked you whether or not you ever assessed risks and make predictions in cases? Do you remember that?

[p. 494] A. Yes, I do.

Q. And you said "yes"?

A. I do.

Q. Can you tell us in what types of cases you make those assessments and predictions?

A. All kinds of cases. But very frequently I'm asked by state hospital personnel to consult on a case when they're thinking about releasing somebody and they wonder if it would be safe to do so. That happens at both

the Larned State Hospital and Osawatomie State Hospital. And particularly I'm asked to do that on patients because I work a great deal of those kinds of individuals and might be aware of some risk factors. Occasionally asked to do that when the individual may also have a sex offense in the background, and I have been asked very many times how close the place was he was going to live to the nearest grade school. And I find out sometimes it's across the street. So I have to make decisions about whether somebody would be amenable to treatment, a program at Menninger incest diverson program. So you do have to make clinical decisions based on the information you have about whether somebody is an acceptable risk to engage in a program or engage in release.

Q. You talked or you've mentioned like the location of the school. Are you familiar at all with the release procedures that the Kansas Parole Board uses?

[p. 495] MS. FOULSTON: Your Honor, I object. It's all outside the scope of direct examination.

THE COURT: Well, it is sustained. It is outside the scope.

BY MR. WEILERT:

Q. In your experience, sir, is there a difference between making a clinical decision and making a prediction as set forth in the statute we're dealing with?

MS. FOULSTON: Your Honor, I object to the form of the question, 'cause I don't understand it.

THE COURT: Well, that's not a good basis for the objection but –

MS. FOULSTON: It's the best one I've got, Your Honor.

THE COURT: At this time, Mr. Weilert, I will ask you to rephrase the question.

MS. HARTMAN, JUROR: Please do.

BY MR. WEILERT:

Q. In regards to predictability – And don't couch it in terms of the statute. I'll make the legal determinations. You said that you have to make these clinical decisions, and I assume you do that on a regular basis, don't you?

A. Sure.

Q. Is there a requirement in the field of psychiatry or psychology that a clinical decision is based upon a more than [p. 496] 50 percent probability of something happening?

A. No, absolutely not. What you, in fact, do is – It's sort of like the babysitting question that Ms. Foulston asked me a minute ago. It's one thing to predict if this guy comes over to my house, he's going to molest my kids on this particular day; another thing to let him babysit on a routine basis when there is a three out of ten chance that he would molest the kids over the next month or next year. Seven out of ten guys with his history wouldn't do it. But you are not going to expose your kids to a 30 percent risk. That's a different issue than saying, "I'm going to tell you that I'm a betting man; I'll bet that this guy will actually molest these kids." I can't predict that. The fact I would lose 70 percent of the time, it is not gonna be worth it to me.

MR. WEILERT: I don't have anything else, Your Honor.

THE COURT: Any further cross?

MS. FOULSTON: Nothing. Thank you. Thank you, Dr. Logan.

THE COURT: Thank you, Doctor. May this doctor be excused?

MR. WEILERT: Yes, sir. Thank you.

THE COURT: All right, sir. You are excused. Respondent may call his next witness.

MR. WEILERT: Respondent will rest, Your

* * *

[p. 528] please bring the jury in.

(The jury returns to the courtroom.)

THE COURT: Good afternoon, ladies and gentlemen. As I understand it, you have arrived at a verdict.

I see, Mr. Lukens, that you are carrying something. Does that mean you are the foreman of the jury?

MR. LUKENS: That's correct, Your Honor.

THE COURT: Do you have a verdict, sir?

MR. LUKENS: Yes, sir, we do.

THE COURT: Would you please deliver the verdict to Mrs. Soper.

MS. SOPER: Thank you.

THE COURT: Very well. I will ask Mrs. Soper at this time to read the jury's verdict into the record.

MS. SOPER: "We, the jury, make the following answer to the question submitted by the Court. Number 1, is the respondent Leroy Hendricks a sexually violent predator? The answer is yes." This is dated today, the 6th day of October, signed by Robert Lukens, presiding juror.

THE COURT: Ladies and gentlemen of the jury, I will now do what is called polling the jury. What this basically means is I will read his your names and ask you one the question, and that is, "Is this your verdict?" If this is your verdict, you simply have to answer yes. If it is

* * *

JURY INSTRUCTIONS ON SEXUAL PREDATORS AND MENTAL ABNORMALITIES (10/6/94)

INSTRUCTION NO. 6

To find that the respondent, Leroy Hendricks, is a sexually violent predator, each of the following elements must be proved beyond a reasonable doubt:

(1) That respondent has been convicted of a crime of sexual violence;

(2) That respondent suffers from a mental abnormality; and,

(3) That such mental abnormality makes respondent likely to engage in predatory acts of sexual violence.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict that the respondent is a sexually violent predator.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one or more of these elements, then it will be your duty to return a verdict that the respondent is not a sexually violent predator.

INSTRUCTION NO. 7

"Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

VERDICT (10/6/94)

IN THE DISTRICT COURT OF
SEDGWICK COUNTY, KANSAS
PROBATE DEPARTMENT
DIVISION 5

IN THE MATTER OF THE CARE AND TREATMENT OF LEROY HENDRICKS, Respondent.	Case No. 94 P 964

VERDICT

(Filed Oct. 7, 1994)

We, the Jury, make the following answer to the questions submitted by the Court:

1. Is the respondent, Leroy Hendricks, a sexually violent predator?

12 Yes 0 No

Dated this 6 day of October, 1994.

/s/ Robert A. Perkins
Presiding Juror

JOURNAL ENTRY OF COMMITMENT (10/6/94)

jc
NOLA FOULSTON, #09175
District Attorney
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316/383-7713

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
PROBATE DEPARTMENT

IN THE MATTER OF THE CARE AND TREATMENT OF **LEROY HENDRICKS,** Respondent.	)	Case No. 94 P 964

PURSUANT TO Kansas Statutes Annotated 59-29(a)01 *et seq.* (Ch. 316 1994 Legislative Session) An Act concerning persons who commit sexually violent offenses.

JOURNAL ENTRY OF COMMITMENT
OF SEXUALLY VIOLENT PREDATOR

(Filed Oct. 21, 1994)

NOW ON THIS 3rd day of October, 1994 this matter comes on for jury trial before The Honorable Gregory L. Waller, Judge of the District Court, within forty-five (45) days of the filing of the Petition alleging respondent to be a sexually violent predator as defined by law; and after

evaluation of respondent at Larned State Hospital as previously ordered herein. Petitioner, State of Kansas, appears by its attorneys, Nola Foulston, District Attorney and Debra L. Barnett, Assistant District Attorney. Respondent appears in person and by his court appointed attorney, Thomas J. Weilert.

Thereupon, a jury is duly impaneled and sworn and evidence is presented from court day to court day until both sides rest.

The following witnesses were sworn and testified on behalf of petitioner:

Rose Loux
Roger Morris
LeRoy Hendricks
Stella Carter
Ron Davenport
Lester Lee
Mary Chambers
Dr. Charles Befort

The following witness was sworn and testified on behalf of respondent:

Dr. William Logan

THEREUPON, the Jury, having received the evidence, the instructions of the Court, and the arguments of counsel, and having duly deliberated, on the 6th day of October, 19914 [sic], by unanimous verdict finds beyond a reasonable doubt that respondent is a sexually violent predator as defined by law and returns the following verdict in open Court:

We, the Jury, impaneled and sworn in the above entitled case, do upon our oath find the respondent, Leroy Hendricks:

X Is a sexually violent predator

_ Is not a sexually violent predator

Date of this verdict October 6, 1994.

Presiding Juror /s/ Signed by Presiding Juror

Thereupon, the Court accepted the unanimous verdict of the jury and continues this case for further proceedings.

Thereafter, on the 20th day of October, 1994, this case comes on for further hearing. Petitioner, State of Kansas, appears by its attorney, Debra L. Barnett, Assistant District Attorney. Respondent appears in person and by his attorney, Thomas J. Weilert.

WHEREUPON respondent presents argument in support of his motion to dismiss or in the alternative motion for a new trial.

WHEREUPON, the Court, after hearing the statements and arguments of counsel, after having reviewed the file and being fully advised in the premises overrules such motions.

WHEREUPON, the Court, after being fully and duly advised in the premises finds, orders, adjudges and decrees that respondent is a sexually violent predator as defined by Kansas Statutes Annotated 59-29(a)01 et. seq. (Ch. 316 1994 Legislative Session – Violent Sexual Predator Act) and further pursuant to such enactment that respondent should be committed to the custody of the

Secretary of Social and Rehabilitations Services for control, care and treatment until such time as respondent's mental abnormality or personality disorder has so changed that respondent is safe to be at large.

IT IS THE FURTHER ORDER OF THE COURT that such treatment shall be provided at a facility operated by the Department of Social and Rehabilitation Services, and that at all times, respondent shall be kept in a secure facility segregated from any other patient under the supervision of the Department of Social and Rehabilitation Services.

IT IS FURTHER ORDERED that the Clerk of this Court deliver two (2) certified copies of this judgment and commitment to the Sheriff of Sedgwick County, Kansas, or one of his duly authorized deputies. It is further ordered that such certified copies serve as the commitment of the defendant and make due return thereof and that said Sheriff or authorized deputy is ordered to transport the defendant, forthwith, to Larned State Hospital, under the custody of Kansas Department of Social and Rehabilitation Services, to begin treatment.

The Secretary of Social and Rehabilitation Services shall report to the Court as required by the provisions of Kansas Statutes Annotated 59-29(a)01 *et seq.* (Ch. 316 1994 Legislative Session).

IT IS SO ORDERED.

/s/ Gregory L. Waller
GREGORY L. WALLER,
JUDGE

APPROVED BY:

/s/ Nola Foulston
NOLA FOULSTON, #09175
District Attorney

/s/ Debra L. Barnett
DEBRA L. BARNETT, #12729
Assistant District Attorney

/s/ Thomas J. Weilert
THOMAS J. WEILERT, #08626
Attorney for Defendant

MOTION FOR NEW TRIAL, TESTIMONY OF JOHN HOUSE (TRANSCRIPT OF PROCEEDINGS OF OCTOBER 20, 1994)

* * *

[p. 6] your discretion.

MR. WEILERT: Then I think I would like to ask Mr. House to step forward and be sworn.

JOHN HOUSE,

called as a witness on behalf of the Respondent, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEILERT:

Q. Just so we can be – would you tell us your name and your occupation, sir?

A. John House, an attorney with the Kansas Department of Social and Rehabilitation Services.

Q. And in that position with the SRS, sir, are you familiar with attempts to hire a contractor to provide care and treatment under the provisions of the state sexual predator law?

A. Somewhat.

Q. And you were in court, I believe, before Judge – or in a session before Judge Barbara wherein the State presented evidence that they were very close to filing a – or, pardon me, signing a contract with either DECCA or

Prison Health Systems to provide that care and treatment, were you not?

A. I was present in the courtroom. I did not testify at that time.

[p. 7] Q. But you heard those assertions made by the State, did you not?

A. I heard at the time that the Department was negotiating with two bidders in their proposal to contract out those services.

Q. And are you aware whether or not any contract was ever signed by either of those two bidders?

A. No contract has been signed with either of those two bidders.

Q. Is it correct that at this time there is not a professional staff assembled to provide any specialized training to those persons committed to SRS custody under the provisions of the Sexual Predator Act?

A. I would not say that. There is professional staff at Larned State Hospital to be available, and arrangements have been made for them to provide professional services as necessary.

Q. And who is that professional staff?

A. The – I mean, depending on what kind of professional staff you're talking about, you have physician services, nursing services, psychology services, social work services, activity therapy services, so on and so forth, the whole range of professional services available at Larned State Hospital.

Q. Is it correct, though, sir, that those services are those [p. 8] which are available to mentally ill persons in general?

A. Well, we provide care and treatment for persons who are mentally ill at Larned State Hospital. Also provide alcohol and drug abuse treatment services, and so on. There is a range of services available there.

Q. Larned State Hospital does not have a program specifically designed to treat sexually violent predators, does it?

A. The Department has assembled a program to provide that kind of care and treatment. It is currently located at Larned State Hospital. I don't know whether I would call that Larned State Hospital or not. I mean, it is a separate program and under separate administration, but it will right now be housed on the grounds of Topeka – or, excuse me, Larned State Hospital and will borrow from that facility.

Q. Are you aware of any of the persons who you say would provide that care, whether they have any specialized training in the provision of treatment to persons committed for being sexually violent predators?

A. I'm not sure I could follow the entire question. Staff have been hired specifically who would provide immediate care.

Q. By that, you mean people who simply – you know, staff to make sure that there are – there is a bed made, that there are meals given, there's exercise, there's showers [p. 9] and hygiene care, that type of thing, aren't you?

A. Certainly that and the implementation of any treatment program which professional staff might set out.

Q. Okay. Now, the professional staff, there's no one specifically hired to operate the sexually violent predator treatment program, is there?

A. No one specifically hired under that program at this time.

Q. Okay. And there is no clinical director for that program, is there?

A. Not at this time.

Q. There is no psychiatrist or psychologist specifically hired to staff that program, is there?

A. Not specifically hired to staff that program at this time.

Q. As far as you're aware, there's no one in the psychiatric or psychological professions that are available for treatment – who have any special expertise in the treatment of sexually violent predators, is there?

A. There's certainly staff there who has had experience in treating sexual dysfunctions of various kinds, including pedophilia, which I think is basically –

Q. I don't think that answered my question, though, sir.

A. I don't – there are professional staff at Larned State Hospital that would be available in the interim, while staff specifically dedicated to this program are hired, that would be able, I think, to provide substantial [p. 10] services.

Q. Okay. But the staff that is there right now, they're the same staff that provides treatment to other mentally ill patients at Larned State Hospital, aren't they?

A. Professional staff?

Q. Yes, sir.

A. Yes.

Q. And there is really nothing different about the treatment that they can offer Mr. Hendricks than there is what they offer to the other people at Larned State Hospital, is there?

A. I don't know that I can answer that. I'm not a clinician, so I don't know what kind of professional services they would be able to provide.

Q. Is it the intention of the Department of Social and Rehabilitation Services to hire professional staff specifically to treat people committed under the Sexually Violent Predator Act?

A. Yes.

Q. Is it correct that some of the – or at least one of the reasons why SRS decided to operate this program internally was because the contractors that were being negotiated with could not provide that staff?

MS. BARNETT: I'm going to object to that, Your Honor, lack of foundation, being outside the personal [p. 11] knowledge of this specific witness, and calling for hearsay.

THE COURT: Well, I'll sustain unless we can establish foundation that he does have this knowledge.

BY MR. WEILERT:

Q. Okay. Do you have any knowledge concerning some of the problems that arose during the negotiations regarding hiring a contractor?

A. No, I don't know why the bids weren't accepted.

Q. But you do know that none were?

A. That's correct.

Q. So would a correct summary be that there's no professional staff specifically hired for the sexually violent predator program; there's no clinical director; there is no staff, other than the same that provides other treatment to mentally ill persons; is all that correct?

MS. BARNETT: Objection, compound question, leading.

THE COURT: I'll sustain it.

BY MR. WEILERT:

Q. I think you've already testified to all that before, haven't you?

A. Well, again, I mean, we have hired specifically dedicated direct care staff. We're in the process of hiring specifically dedicated professional staff. Specifically [p. 12] dedicated professional staff has not been hired, expect it will be shortly.

Q. Well, you heard the – I think at the time he testified – and his first name is Terry. I can't think of his last name.

A. Mr. Davis.

Q. Mr. Davis indicated that – to the Court back in early September that the contractor would be named. In fact, he thought perhaps there had already been a contract signed. Do you remember that testimony, sir?

MS. BARNETT: I'm going to object, Your Honor, as to calling for an answer based on hearsay.

MR. WEILERT: He was there in the courtroom and heard it, Your Honor.

THE COURT: Well, I'll overrule the objection.

THE WITNESS: I did hear that bids were being reviewed and it was his hope that a contract could be shortly signed.

BY MR. WEILERT:

Q. And nothing has been signed now, and we're a month and a half later?

A. That's correct.

MR. WEILERT: I believe that's all. Thank you, sir.

THE COURT: Ms. Barnett, do you desire any [p. 13] cross?

MS. BARNETT: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. BARNETT:

Q. Mr. House, there isn't anyone at Larned right now, is there, who has been designated a sexually violent predator?

A. No.

Q. In fact, if Mr. Hendricks is committed to Larned or to the custody of the Secretary of Corrections, he'll be the first one committed under this act; isn't that correct?

A. To the Secretary of Social and Rehabilitation Services, that's correct.

Q. I am sorry.

A. No, there's no one else in the state been committed to the Secretary's custody yet.

Q. Would there be any point in, let's just say, getting a sexually violent predator program up and going for no one?

A. We have made plans with the expectation one would happen, and we've taken steps to implement that, but, you're right, there's a limit to how much you can do until you actually have someone to treat.

Q. Well, you can't treat somebody that's not there; isn't that correct?

A. That's correct.

[p. 14] Q. Now, you've indicated that, despite Mr. Weilert's questions of you, you don't have anyone specifically designated. You do have professional staff at Larned; isn't that correct?

A. That's correct.

Q. Larned has nurses; isn't that correct?

A. That's correct.

Q. Larned has physicians; isn't that correct?

A. Correct.

Q. Larned has psychologists?

A. Correct.

Q. Larned has psychiatrists?

A. That's correct.

Q. In fact, one of the psychologists there is a Dr. Befort; isn't that correct?

A. That's correct.

Q. And do you know from your own personal knowledge whether Dr. Befort has extensive background in dealing with sex offenders?

A. No. I'm not terribly familiar with his background. I do know that he did the evaluation in the particular case.

Q. All right. Now, with regard to this designation that we're giving of sexually violent predators, you are an attorney, aren't you?

A. That's correct.

[p. 15] Q. Have you heard of Chapter 316, which is the Sexually Violent Predator Act?

A. I have.

Q. The phrase "sexually violent predator," is something that the legislature has coined; isn't that correct?

A. That's correct.

Q. To your knowledge, that's not a title given to a mental illness or a diagnosis of a mental illness, is it?

A. Again, I'm not a clinician; but, to the extent that I'm familiar with it, no, I'm not aware that that's a commonly understood clinical term.

Q. I believe you had indicated during your direct with Mr. Weilert that you understood that some of these diagnoses given for sex offenders or sexually violent predators might be in the area of pedophilia; would that be correct?

A. That's correct.

Q. Would it surprise you if I indicated Mr. Hendricks, who we are talking about in this case, he's been diagnosed as a pedophile?

A. That's what I understand.

Q. Is it your understanding that Larned currently and in the past has dealt with individuals who have been diagnosed as pedophiles?

A. That's correct.

Q. And that they have provided mental health care and [p. 16] treatment to those individuals?

A. Correct.

Q. All right. Would it be fair to say that, to the best of your knowledge, mental health care and treatment is mental health care and treatment?

A. Yes.

Q. Okay. You have to look at the specific need of the individual; isn't that correct?

A. That's correct.

Q. And part of that is based on doing an evaluation and then looking at what type of treatment program you can give to that individual?

A. Correct.

Q. Certainly we wouldn't want to just have some form program that we plug people into, would we?

A. All the care and treatment out there is based on individualized treatment plans that are prepared for each individual person as they're admitted, and then the treatment follows up on that individual as planned.

Q. And to the best of your knowledge, that wouldn't be any different for Mr. Hendricks, will it?

A. No.

Q. Even though he's been designated as a sexually violent predator?

A. No. He would go through at least an initial stage, [p. 17] evaluation and then the development of an individualized treatment plan.

Q. Whatever his needs are, Larned will try to meet those needs, won't they?

A. That's correct.

Q. I don't know exactly where Mr. Hendricks is going to wind up, but let's just say that he winds up at Larned, and let's say he winds up there tomorrow. To the best of your knowledge, will Larned begin, immediately upon his arrival at their facility, the evaluation process in

trying to determine what his needs are and dealing with these needs?

A. In a rough sort of sense, correct. I mean space is available, staff is available. There will be a certain period of time in which he kind of settles in and staff get to know him and he gets to know staff. That would all be part of an evaluation process.

Q. And with regard to that staff, you're talking about professional staff, aren't you?

A. Both direct care and professional staff.

Q. And by professional staff, maybe to be a little bit more specific for the record, we're talking about psychologists and psychiatrists and physicians, aren't we?

A. Social workers and therapists of different sorts, yes.

Q. People who would begin the process of identifying his needs and dealing with them; isn't that correct?

[p. 18] A. That's correct.

Q. Is it possible that the people who are going to ultimately be designated – and, for the record, I'm making quote kind of marks with my hands – who are designated as the sexually violent predator people, is it possible that those people will come from within Larned?

A. I suppose that's possible, certainly, if someone already at Larned State Hospital has applied for the position and was hired.

Q. And indicates an interest in working specifically in that area?

A. That's a possibility.

MS. BARNETT: Thank you very much, Mr. House. I have no further questions at this time, Your Honor.

THE COURT: Any further questions, Mr. Weilert?

MR. WEILERT: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. WEILERT:

Q. Mr. House, if I understand your testimony, you're saying that Larned State Hospital has staff that has treated persons with, for lack of a better term, sexual dysfunctions for some period of time, right?

A. Yes.

Q. And that those are the same people who, at least at this stage, would be treating Mr. Hendricks?

[p. 19] A. Well, I mean, not exactly corresponding. There's a number of other elements someone has to meet to be committed under the Sexual Predator Act.

Q. But if he goes out there tomorrow, those same people will be providing treatment; is that right?

A. That's correct.

Q. And as far as you're aware, they would be using the same treatment modalities that they've used from their previous experience, right?

A. Again, I'm not a clinician. I don't know exactly what kind of treatment modalities they would use.

Q. Well, if they've used treatment or if they have treated pedophiles before, you don't have any reason to believe they would change their treatment modality, do you?

MS. BARNETT: I'm going to object to that. The witness has already answered that he doesn't know.

THE COURT: I'll sustain the objection. It's outside his scope of knowledge.

BY MR. WEILERT:

Q. Okay. But so far as you're aware, there are no plans to change that treatment modality, are there?

MS. BARNETT: Same objection, Your Honor.

THE COURT: Well, I'll overrule that. He can answer if he knows.

THE WITNESS: I don't personally know of what [p. 20] the treatment plans are.

BY MR. WEILERT:

Q. Okay. When you talk about there being space available, that has Mr. Hendricks separated from everybody, doesn't it?

A. That's correct.

Q. And when you talk about some of the treatment programs that have been going on out at Larned for a long time dealing with pedophilia, are you familiar whether or not those include group treatment or group treatment sessions?

A. I'm not specifically familiar, no. I assume so, but I don't specifically know.

MR. WEILERT: Okay. I don't have anything else. Thank you.

THE COURT: Anything further, Ms. Barnett?

MS. BARNETT: No, Your Honor.

THE COURT: All right, sir, you may step down.

MR. WEILERT: In continuation, Your Honor, it appears that the state does not have a treatment program specifically designed, which the statute requires, to be for the treatment of sexually violent predators. What they have are people who have done treating of mentally ill people in Larned State Hospital for some period of time, and that it is certainly logical to assume that, since they are not specifically hired to operate the [p. 21] sexually violent predator treatment program, they're going to be using the same treatment systems and modalities that they've used for years and which the legislature has specifically said are not treatment modalities which are acceptable to the legislature in a case such as Mr. Hendricks' So we don't have – pardon me, the state does not have the specialized treatment program, the specialized treatment modalities envisioned by the legislature in place. You know, they hope to have some soon, and we've already seen what "hoping" and "soon" mean in dealing – in terms of having a treatment program available. Back on September 6th, they hoped to have a contractor engaging in this – pardon me, set to engage in this treatment soon. Now they don't have a contractor, they don't have a program, and there's no indication at

what point in time such a program director or clinical director, a specialized treatment team is going to be available.

And, Your Honor, to incarcerate someone with the hope that at some point in the future there's going to be a suitable treatment program is simply not acceptable. In reality, what it amounts to is an indefinite incarceration based upon conduct which does not constitute a new criminal offense, and for that reason, it is criminal in nature; it is not for care and treatment, since the [p. 22] special modality of training and treatment is not available. And that was the sole justifying reasons for Judge Barbara's finding that this was a civil statute rather than a criminal one. Because that justification is no longer in existence and is not in existence, the statute is obviously criminal. It violates the Constitutional provisions for double jeopardy ex post facto. It violates substantive and procedural due process, and Mr. Hendricks should be discharged.

In addition to the other arguments set forth briefly in the motion, the only other one I want to spend any time on is – and this isn't in the motion, but it kind of came up yesterday. I was sitting in my office yesterday afternoon and was informed by a reporter for the – I think it was KFDI – that the county commission had summarily denied payment of the bill for fees and expenses that I had submitted kind of unintentionally, but that had been submitted in any event. What that does, Your Honor, I understand the county's position is they're saying that the legislature has mandated that these proceedings be had; that persons subjected to them will be represented by counsel or appointed counsel, and they shall be

allowed funds for experts and a couple of other things. And the county took the position that, since the state didn't provide any funding, we aren't going to pay the bill.

[p. 23] Well, it's pretty obviously an irresponsible act by the legislature to pass this type of legislation without any provision for funding the obvious expenses that are going to arise out of it. But that is, unfortunately, not uncommon for our legislature. But in a very real sense, the action by the legislature, in combination with that of the county commission, violates the provision of the statute which says that Mr. Hendricks will be – or people similarly situated will be appointed counsel.

Your Honor, I always hesitate to speak for other members of the bar, but I think Your Honor is somewhat aware of the amount of time involved in representing someone on one of those cases, on the amount of disruption it can have on a person's practice and on the very real economic needs of a lawyer to be paid for his or her services. It cannot help but have a rather chilling effect upon the willingness of members of the bar to represent people similarly situated if they are faced with the prospect of not getting paid or, at the very best, having to go to the appellate courts of the State of Kansas to get some direction on whether they're going to be paid for their services. In reality, what the legislature has granted with one hand, the right to appointed counsel, the county is trying to take away with the other by saying, We're not going to pay the bill. And [p. 24] there's no way to submit a bill to the Board for – to – Board for Indigents' Defense Fund because this, according to the legislature and Judge Barbara's ruling, is a civil matter and not a criminal. So

even though the statutory scheme may provide for counsel, the reality of the situation is that, if counsel is not going to be paid, the likelihood of finding persons willing to accept appointments is very, very remote. And for that reason, we feel the combination of the state legislature not funding the provisions of the statute and the county commission denying payment combine to deny Mr. Hendricks and others so situated a – their statutory, if not Constitutional, right for effective assistance of counsel. And we feel that the appeliate process, which is also still to come and for which the same provisions are made for appointment of counsel, indicate that Mr. Hendricks is going to be denied that assistance and, therefore, he should be discharged. Thank you.

THE COURT: Thank you. Ms. Barnett, do you care to respond?

MS. BARNETT: Yes, Your Honor. Well, Mr. Weilert talks a lot about the legislative intent and the legislative ideas for a different treatment modality, but I think that what we really need to do is focus on what the law says because that most accurately reflects what [p. 25] the legislature intends. And if you look at Chapter 316, Section 1, you'll find the following statements, and I quote: "The legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons defined in K.S.A. 59-2901 et seq. and amendments thereto. . . . " And I'll end my quote there.

This piece of legislation doesn't say that for sexually violent predators who are sex offenders that you need to develop some special treatment program for them or whatever else. That may be determined by the professionals at some point in time. It may be already determined by them now. But I think what we're doing here is we're comparing apples with oranges. Sex offenders suffer from personality disorders and mental illness. They are the same types of personality disorders and mental illness the professionals have been dealing with for a long, long time. In this piece of legislation, the legislature has said that there are certain sex offenders who, because of their personality disorders and mental abnormalities, are so dangerous and so predatory that they [p. 26] need to be in a secure facility and they need to receive long term care and treatment, and they need treatment modalities that are very different from the treatment modalities for people who suffer from other mental illnesses. I don't think it takes a rocket scientist to figure out that if you hear voices that tell to you do things that you need to be treated a little bit differently than somebody who likes to have sex with children, like Mr. Hendricks. You're going to need different treatment than Mr. Hendricks does, especially in view of the fact Mr. Hendricks doesn't think he has a problem and he won't avail himself of the needed counseling and therapy that has been offered to him in the past.

This piece of legislation is going to be implemented and begin with Mr. Hendricks. He is the first case, the first individual who will be committed to the Department of SRS, and they will begin his evaluation process and treatment as soon as he arrives at their facility.

No, they don't have a clinical director who is called the Clinical Director for Sexually Violent Predators, but they don't need one. His treatment needs are going to be met, and as they learn about him and evaluate him and develop a rapport with him, they will continue to change and monitor and evaluate the program [p. 27] and treatment they are offering him. And that is the way that it should be. To suggest somehow that there is some formula here that we ought to plug him into like everybody else and treat him that way, I think, completely denies what the legislature wanted. They wanted an individual treatment program for these people, and that's exactly how he's going to be treated and dealt with, and there's nothing inappropriate or wrong about that.

I think this is an example of getting the cart before the horse. How can SRS set up a program for people who aren't in the program or who don't exist? You have to have people to treat before you can engage in treatment. And that's what we're talking about here. And they will begin his treatment as soon as he arrives and everything gets evaluated and settled the way it should be.

I believe that Mr. Weilert's stated it correctly when he indicated that the issues raised in his motion to dismiss have already been dealt with in great length during the trial process of this case, so I would just ask the Court to uphold the prior Court's findings on all of these issues.

With regard to the final point raised about the legislature being irresponsible and enacting this piece of legislation and not funding it, what I would argue is that it's an irrelevant response for us to put a price tag on [p. 28] the welfare of our children. We're talking about money

here, and that's something that can be taken up with the county commission and dealt with in another instance. The defendant or the respondent in this case was not denied the right to good representation. He had a good attorney who represented him very well throughout this process, even though, as of today, he has not received any money for that representation. This man, Mr. Hendricks, has not been denied his right to representation, and that's the only issue properly before the Court. Whether or not somebody else on down the road may be denied the right to representation is a matter for that Court on that day at that time. But talking in the abstract about what may or may not happen in the future has no bearing on this present case. Mr. Hendricks got representation. He got very good representation, and he has not had his due process rights or any other Constitutional rights denied by the fact that his attorney has not yet received money from the county or anyone else with regard to this case.

So I would ask the Court to deny the respondent's motion to dismiss or in the alternative a motion for new trial. And with regard to the claim of failure to pay or anything of that nature, I believe that it's already been discussed about having another hearing on that matter so that we could notice up the county attorney in this matter [p. 29] so that he could be here to represent the county commission, if there's any further discussion about bills or payment of these.

THE COURT: It is the position of the Court that the matters raised by the defendant in the motion to dismiss or in the alternative a motion for new trial – I say the defendant. I meant respondent. I believe those matters were properly handled and dealt with by this Court

and other courts. I feel that the arguments of the defendant in regards to there not being a treatment program available are not sufficient because I believe that the Secretary of Social and Rehabilitation Services has established a treatment program. That program will be available perhaps at some time in the future. But when it becomes apparent that that program is not a viable program, something can be done. On that basis alone, I would overrule the motion for new trial and/or to dismiss.

In regard to the matter of the payment, as Ms. Barnett pointed out, Mr. Hendricks has received very competent and able representation. But I'm going to request, Mr. Weilert, that you do notice the county counselor's office, who will have a hearing in regards to this matter about payment of these. Advise me when we can schedule that, and I will calendar it.

I had previously found that Mr. Hendricks, by reason [p. 30] of the verdict of the jury on October 6, is a sexual predator, and I have previously committed him to the custody of the Secretary of Social and Rehabilitation Services for treatment. That order stands, and the defendant should be transported to Larned State Hospital to begin that treatment as soon as possible.

Court will be in recess.

MR. WEILERT: Your Honor, there were just two kinds of housekeeping things. First of all, as far as when Mr. Hendricks is transported to Larned, the last time he went out there, he was allowed to take his personal property and personal papers and cigarettes with him, and I assume that order would still remain in effect.

THE COURT: It would.

MR. WEILERT: Okay. And, secondly, I've discussed with Ms. Barnett in the court file in this matter, during pretrial stages there were various documents, some of which were faxed to Judge Barbara, some of which were filed by Ms. Shaneyfelt, some by Mr. Greeno, some by myself. We agreed to get together at some point next week to go through just to make sure that the record is correct and that everything that was – should have been in the file is, in fact, in the file. And, if necessary, would the Court approve an order or sign an order approved by Ms. Barnett and myself that any document

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STATE HABEAS CORPUS PROCEEDING UNDER KAN. STAT. ANN. 60-1501 (TRANSCRIPT OF PROCEEDINGS OF AUGUST 28, 1995)

[p. 5] MR. WEILERT: Your Honor, I don't believe they're as specific as is required by the code of civil procedure, but they do have a general denial.

THE COURT: And they're verified.

MR. WEILERT: Yes.

THE COURT: Are you ready to proceed?

MR. WEILERT: Yes, Your Honor.

THE COURT: You may proceed.

MR. WEILERT: Thank you, Your Honor. We would call Charles Befort.

CHARLES BEFORT,

called as a witness in behalf of the Petitioners, being of legal age and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEILERT:

Q. Would you tell us your name and occupation please, sir?

A. My name is Charles Befort; I'm chief psychologist at Larned State Hospital.

Q. And Dr. Befort, we've met a few times before, haven't we?

A. Yes, we have.

Q. I'd like to go back to the period of time before we first met, say to about July of 1994, can you tell [p. 6] us what your occupation was at that time?

A. Same occupation.

Q. Okay. And as I recall, you were the chief psychologist and that included work at both the Larned State Hospital and the State Security Hospital?

A. That's right.

Q. And this once again we're talking about approximately July of 1994, those were or that was a full-time position, was it not?

A. Yes.

Q. And did you have any difficulty at all in filling up your 40 or 50 or 60 hours a week?

A. Not at all.

Q. Can you tell us something about your educational background, sir?

A. I have a doctor of philosophy degree in psychology from Oklahoma State University.

Q. And you have been a licensed psychologist for how long, sir?

A. Since about 1971.

Q. And it's my understanding that you did not have any type of internship or fellowship in the treatment of sexual offenders, is that right?

A. That's right.

[p. 7] Q. And your employment since obtaining your PhD has been at Larned State Hospital, has it not?

A. Yes. And I also work in a mental health center one day a week.

Q. You told me where that was and I don't remember.

A. Greensburg.

Q. The Iroquois Center I believe?

A. That's right.

Q. Now, before July of 1994 then, would it be correct to say that you did not have any specialized advanced training in the treatment of sex offenders?

A. That's correct.

Q. In, I believe it was September of 1994, I along with some other lawyers took your deposition in Mr. Hendricks' case and the case of Richard Beam, is that right?

A. That's right.

Q. And that was at the district attorney's office in Wichita?

A. Yes.

Q. Now, during the course of that deposition you testified that in your opinion you were not qualified to be a director of a sexual treatment program, is that right?

A. I can't remember, but that's probably what I would [p. 8] testify to.

Q. So here today you feel that you're not qualified to be a director of a sexual treatment program?

A. I am more qualified than I was a year ago, yes.

Q. Okay. The fact remains though that in your personal opinion, you don't, still don't think you're qualified, do you?

A. Not fully.

Q. Now, in, I believe in that same deposition and at times later, you have given some information as to what you felt a sexual treatment program ought to contain, is that correct?

A. I gave that in a deposition a couple of weeks ago.

Q. Okay.

A. That what you're referring to?

Q. That plus I think some others but we'll stick with the one a couple of weeks ago. That was August 16th in Wichita, wasn't it?

A. Yes.

Q. And that was in the case of State of Kansas versus Jack Spratt?

A. Yes.

Q. And in that deposition you talked about the fact that there were no clinical people giving any treatment to the persons confined in the sexual [p. 9] treatment program at the Larned mental health facility, is that right?

A. Except for me, yes.

Q. Now, in your position as of August 16th of 1995, just a couple weeks ago, you, I believe, said that the offender or pardon me, the people in the sexual treatment program were receiving essentially no treatment; do you recall saying that?

A. Yes.

Q. And that's a true statement, is it not?

A. I believe so.

Q. Are you familiar with a sexual predator treatment program composition which it's my understanding was prepared by Janet McClellan and for the sexual treatment program at Larned?

A. It's been sometime ago, I remember putting it together, yes.

Q. Did you assist in putting that together?

A. Not a great deal, mostly looked it over, checked it for internal consistency and also just to educate myself as to what was in there.

Q. Okay. Who put that treatment program proposal together?

A. I think Ms. McClellan did most of that.

Q. Would it be fair to say that the treatment program [p. 10] in your opinion as a psychologist should include persons who have an expertise in the psychological and psychiatric fields?

A. Yes.

Q. And would it be your opinion that the director of that program should have expertise in those areas?

A. Not necessarily.

Q. Should there be a, if the director of the program does not have that expertise, should the person in charge of the actual clinical department have that expertise?

A. Yes.

Q. And you've testified that you feel you do not have that expertise, is that correct?

A. Not entirely, that's right.

Q. Now Ms. McClellan, do you know anything about her educational background?

A. Some.

Q. She has degrees, I believe in relating to business and law enforcement, does she not?

A. Yes.

Q. Doesn't have any training in psychology or psychiatry, does she?

A. Not that I know of.

Q. The document that we just spoke of, the sexual [p. 11] predator treatment program composition, it lists several items that are in bold face required characteristics. One of the required characteristics, number three, is that the program must have adequate staffing in terms of numbers, quantifications and gender representation. Now the sexual treatment program at Larned doesn't have that, does it?

A. Not at this time.

Q. The fourth one is it says that the program must have adequate funding, not only for the necessary and required staff, but for materials, equipment, staff training, resident treatment and education, and for adequate space to carry out its assigned tasks. The program at Larned doesn't have that, does it?

A. I think it has all that. It has plenty of funding and we have lots of space.

Q. You don't have the materials and equipment that you would consider necessary in a sexual treatment program though, do you?

A. I think we have most of it, not all of it.

Q. What don't you have?

A. I don't know if we have the plethysmograph lab in place, I don't know if we have the equipment yet. We're going to have a polygraph lab and I believe [p. 12] we're still waiting for that. We do have plenty of testing materials and books and videotapes and so forth and we can get whatever we need.

Q. So you have some of that but not all of it?

A. Quite a bit.

Q. In, I believe it was October of 1994, Mr. Hendricks was admitted to the sexual treatment program, is that correct?

A. That's probably right.

Q. And at the time Mr. Hendricks was admitted, actually before that time, you had done an evaluation of Mr. Hendricks, haven't you?

A. Yes.

Q. And you testified at his commitment hearing?

A. Yes.

Q. And at least to a significant degree, your testimony is what resulted in him being committed, isn't that correct?

A. I assume that.

Q. You were the only psychologist who testified on behalf of the state that offered any opinion as to Mr. Hendricks, whether or not he was a sexual predator as defined by the statute?

A. As I recall, that's correct.

Q. You recognize, do you not, sir, that that creates a [p. 13] significant barrier for you being an effective treatment giver?

A. Yes.

Q. And that's a widely recognized premise in the psychological and psychiatric fields, isn't it?

A. I believe so.

Q. And up until this time you're the only psychologist or psychiatrist that Mr. Hendricks has had any contact with, aren't you? In the sexual treatment program?

A. That's correct.

Q. For the reasons you just stated, would you agree that it would be extremely difficult, if not impossible, for you to give effective treatment to Mr. Hendricks?

A. I assume that, with respect to certain issues, yes.

Q. In fact, those are the, for lack of a better term, the sexual issues that cause him to be here, right?

A. Sexual deviant, yes.

Q. I didn't have a chance to go through a lot of them, but in whatever that big blue book is, it's kind of a history of Mr. Hendricks since he arrived in Larned back in October of '94, for the first several months of that history, your name appears very sporadically, and is that because you saw Mr. [p. 14] Hendricks very sporadically?

A. That's true.

Q. And that was because you were involved with your other full-time job, right?

A. Right. At that point I was simply consulting psychologist for SRS.

Q. And then at what point did you become the, I believe you're the acting clinical director, is that right?

A. Temporary acting clinical director something, anyway since March the 20th.

Q. And since March the 20th then, pardon me, before March the 20th, did Mr. Hendricks receive any treatment dealing with the sexual deviancy issues that brought him here?

A. Probably a little provided by Mr. Wright.

Q. And who is Mr. Wright?

A. Mr. Wright's a person with a psychology degree who used to be on staff and he saw Mr. Hendricks in individual sessions.

Q. Was that a bachelor's degree in psychology?

A. Master's degree.

Q. Master's degree? And who was supervising him?

A. As a consulting psychologist, he did connect with me quite a bit. We didn't spend a lot of time going over those specifics, though, he just took it from [p. 15] there, flew by the seat of his pants.

Q. Now correct me if I am wrong, but isn't the law in the State of Kansas regarding master's level psychologist is that they are required to work under the direction of a PhD level psychologist?

A. He wasn't functioning as a psychologist formally.

Q. What was he functioning as?

A. A forensic counselor or forensic specialist, some title.

Q. So something below a master's level psychologist and something below a licensed clinical social worker?

A. Yes.

Q. How long was Mr. Wright on staff?

A. He was one of the first folks on staff, in the summer or early fall, and I believe he left employment in March this year. That's my best recollection.

Q. Okay. So other than whatever contact you had with Mr. Wright, that was the only treatment he got up until March of '95.

A. Basically in terms of counseling, right.

Q. I notice there are some references in Mr. Hendricks' record to some group sessions, notations that you have made?

A. Yes.

[p. 16] Q. Now am I correct, sir, that those group sessions are not dealing with sexual deviancy issues at this point?

A. A few times it may have come up, depending upon what the men wanted to discuss. But for the most part, no.

Q. They're primarily dealing, for lack of a better term, kind of a group session about the fact that there aren't any treatment programs in place, isn't that correct?

A. That has been a gripe, yes.

Q. It's been a consistent gripe throughout your period as acting clinical director, hasn't it?

A. Pretty well.

Q. And basically your response during those sessions has been something along the lines of we're working on it, we're trying to get something in place, that type of thing?

A. Yes.

Q. Now, Mr. Hendricks has been here for about ten months now, right?

A. Yes.

Q. You have had occasion to read the sexual predator law on more than one occasion I'm sure?

A. Yes.

[p. 17] Q. And you know that it requires an annual report to the court?

A. Yes.

Q. Who's going to prepare that report for Mr. Hendricks in October?

A. I don't know. I assume I will.

Q. Now, in making that report, you're going to have to tell the court that he has had no opportunity for meaningful treatment, aren't you?

A. Yes.

Q. And in making a report of that type, you are effectively denying Leroy any possible chance for release in October of 1995, aren't you?

A. In terms of following the statute, the requirement that he's no longer dangerous or likely to engage in such behavior, yes, that hasn't been modified and it certainly hasn't been dealt with in treatment.

Q. And the reason it hasn't been dealt with in treatment is because the sexual treatment program at Larned Correctional Mental Health Facility basically doesn't exist outside of you, isn't that correct?

A. In terms of the addressing the sexual deviance, that's essentially correct.

Q. You recognize Mr. Blumenshine?

A. Yes.

[p. 18] Q. And Mr. Blumenshine came to the treatment center in April, I believe, March or April. As far as the type of treatment available to him it would being the same as what you testified about Mr. Hendricks' wouldn't it?

A. Yes, except I don't think Mr. Wright had a chance to work with him. I think he was either gone or leaving.

Q. And in regard to Mr. Hay, your answers would be the same regarding the treatment provided to him?

A. Yes.

MR. WEILERT: I don't have anything else at this time. Thank you, sir.

THE COURT: Thank you. Cross-examine.

MS. HAGERMAN: Your Honor, we have a series of questions for Dr. Befort that would go way beyond the scope of what they asked. We can bring those up now or wait until further examination.

THE COURT: Well, the statute says I'm to hear this matter in a summary fashion. I suppose that that means we're not bound by the technical rules of trial.

MR. WEILERT: We certainly have no objection so long as we're allowed to cross-examine.

THE COURT: Proceed.

[p. 19] CROSS EXAMINATION

BY MS. HAGERMAN:

Q. Dr. Befort, how long have you been an employee with State Security Hospital or Larned State Hospital?

A. Over 28 years.

Q. And throughout those 28 years have you had the occasion to participate in what I would call forensic evaluations and reports to the court?

A. Yes.

Q. And have many of those reports dealt with people who have either been charged or convicted of sexual offenses?

A. Yes.

Q. Do you have an estimate of how many sexual offenders you may have at least in some way participated in there [sic] evaluation or treatment?

A. I'm certain many dozens, maybe a hundred, maybe two hundred over those years.

Q. So when you were asked to fill in as the acting clinical director, or the temporary acting clinical director, whatever your title is, was it with some understanding that you had years of working with people who have sexual offenses in their background?

A. Yes, from an evaluation point of view.

Q. And primarily until you took this temporary [p. 20] assignment was that primarily your job with the State of Kansas was preparing forensic reports?

A. It was one of the bigger portions, but I'm also chief psychologist, so a lot of administrative duties. And in the course of the work I would also be involved with patients that weren't forensic patients, adolescents being an example.

Q. Just so the court and counsel have some idea of how you've been spending your time, did you say March is when you were asked to take –

A. March 20th.

Q. March 20th, could you just kind of run through what do you do for their program what do you do for State Security Hospital?

A. Since then I've been trying to at least make a physical appearance on the unit most days that I'm on duty at Larned State Hospital. I began a group, I don't know when I began it, March or April I would guess, I try to do that twice a week. Sometimes I don't make it because of other pressing duties. That usually takes a couple of hours by the time I get over there, get the group running and record my notes. Additionally, from the very beginning it was presumed that the clinical director, once we get one aboard, will also be doing the predator evaluations 21 that I'm doing now, plus of course, the ongoing evaluations, the evaluations for treatment and then the annual evaluations and so forth. So in the absence of a clinical director I've been doing those, even though physically I do those on State Security Hospital, but technically those are duties that are the same as the clinical director will be doing.

Q. And as far as preparing the sexual predator evaluations is that a quite timely and time consuming job at this point?

A. Very. Very time consuming.

Q. Approximately how many hours would you spend on each case?

A. There have been some I've probably spent at least 30 hours on. I've had one case maybe as few as a dozen. Most of them run I'd say around 20 hours or more.

Q. And then do you often go to court and testify as an expert for the state?

A. I've gone several times, yes.

Q. Does that include depositions as well?

A. Yes.

Q. Is it fair to say that that particular function of this clinical director's job is taking up the [p. 22] greatest majority of your time?

A. I'd say it's taking over half of it for sure, maybe more.

Q. And are you personally familiar with the three petitioners in this matter?

A. Yes.

Q. And I think it was touched on, but you actually did their sexual predator evaluations?

A. Yes.

Q. And you're familiar with their sexual history and the crimes that I guess ultimately led to their current placement?

A. Yes.

Q. Dr. Befort, I'll hand you what's been marked as Respondent's Exhibit E and ask you to identify that please?

A. There is a cover letter and part of my report on Mr. Leroy Hendricks.

Q. And is that your report, your professional opinion as to whether Mr. Hendricks was a sexual predator?

A. The part that's here, yes.

Q. And your conclusion?

MR. WEILERT: Objection, Your Honor, this is irrelevant. There's not a question that Mr. Hendricks was committed back in October. It's [p. 23] irrelevant as to whether he is receiving any treatment at this point.

MS. HAGERMAN: Your Honor, we can move on, we simply want to make sure it's a matter of record. We can move on.

THE COURT: I deem the question withdrawn.

Q. Dr. Befort, how would you summarize the treatment Mr. Hendricks is receiving?

A. My goodness, I don't know where to start. Mr. Hendricks was the first resident that we had, and when he came aboard we were operating out of a closet almost, over on Young Building of Larned, State Security Hospital. At that point in time we had a few staff members to

take care of the day-to-day care and so forth, and Mr. Wright of course, was trying to provide some counseling. So not a lot was being done when he first came. That lasted quite a while till the second resident came. Then a third. And then we were too crowded to exist in that closet anymore. So we moved to the Larned Correctional Mental Health Facility where rooms were provided for them as well as a three room treatment area and care area. That's not counting the day hall. So that was a vast improvement over the situation. At the end of February, I believe, Ms. [p. 24] McClellan came on as a program director. And at that point things picked up rapidly in terms of program development. Since then we've now moved to a, what I call a pod, which gives us even more room for the residents, and for additional residents, should there be any. It also provides more area for staff that are starting to come aboard and will be coming aboard with respect to their office areas and treatment areas. So those are getting in and are essentially basically in place. There has been a great deal of training that has occurred for the staff and fortunately for me too. A real good start in teaching the staff there about the nature of sexual offenders, sexual deviancy and so forth. I've started a group which I talked about before, and that continues. Ideally twice a week. Once in a while I don't make it, but usually twice a week. I think that's about where we're at. I think we're ready to really explode in terms of getting a good program in place.

Q. And Dr. Befort, you and I guess kind of from a psychiatric perspective, and the ward milieu is a term used frequently in a psychiatric hospital, what does that mean exactly?

A. Basically ward milieu means that the environment, [p. 25] the atmosphere, what goes on in terms of interpersonal interaction is of hopefully a therapeutic or positive effect on the residents or patients as is the case in the hospital.

Q. Does that term apply to this particular unit as well?

A. I think so.

Q. And why?

A. In the staff have had enough, staff that are on board have had enough training to the point that they have some understanding about the dynamics of individuals who have sexual deviancies. They know a little bit about confronting, about cognitive distortions and things of that sort. So they interact with the residents on a, they have a knowledge base which hopefully is beneficial to the residents.

Q. Is that a form of treatment?

A. I would say so.

Q. Dr. Befort, were you through with your answer on that, is that correct, a form of treatment?

A. Yes, it is a form of treatment in my opinion.

Q. And is that form of treatment going on currently at the sexual predator treatment?

A. Yes.

[p. 26] Q. Dr. Befort, has Mr. Hendricks admitted he's a sexual predator in need of treatment?

A. Officially, I hope I get this right, he has signed a document saying that he's a sexual offender and is willing to do, willing to engage in treatment. The reason I hesitate is I have talked to Mr. Hendricks about that matter on different occasions too.

Q. I'll hand you what has been marked as Respondent's DD and ask you to identify that?

A. This is a form, the top label is SPTP for sexual predator treatment program, assessment and evaluation request slash refusal. And then it says sexual predator treatment program, treatment declaration. Mr. Hendricks was presented with this document and asked to choose an option listed there and to sign it. The option he chose was I have a problem of sexual deviancy and want to be involved in treatment. Signed by him on May 3rd, and witnessed by me that same date. I did note that he hesitated about signing this without contacting his attorney. But went ahead and signed it anyway saying it was under duress, but it didn't seem to be a big problem for him.

Q. Has Mr. Hendricks participated in the treatment in the groups that you have been running?

[p. 27] A. Yes.

Q. Does he actively participate?

A. Usually, yes.

Q. Are you familiar with the second petitioner in this matter, Paul Blumenshine?

A. Yes, I am.

Q. Did you also do a sexual predator evaluation of Mr. Blumenshine?

A. An evaluation, yes. Oh, yes, the original evaluation, yes.

Q. I'll hand you what's been marked as Respondent's Exhibit F and ask you to identify that please?

A. Yes, that's the cover letter and my report on Mr. Blumenshine.

Q. And your conclusion was he was a sexual predator?

A. Yes.

Q. And if I were to ask you the same series of questions what type of treatment is Mr. Blumenshine receiving on the unit, would your answer be similar as to what you just gave for Mr. Hendricks?

A. Yes.

Q. Does he participate in the groups that you are running at this time?

A. Yes, he does.

Q. Has he acknowledged that he needs treatment?

[p. 28] A. I believe his attitude is no, not really, but I'll go along.

Q. I'll hand you Respondent's EE and ask you to identify that please?

A. Same form as I described with Mr. Hendricks. The option he checked was I do not have a problem of

sexual deviancy and I do not want treatment. And he signed that as long as we added a parenthetical statement, which is but I will attend the classes. I wrote that for Mr. Blumenshine as he is illiterate.

Q. And Mr. Blumenshine is participating in group?

A. Yes.

Q. Are you familiar with the third petitioner in this matter, Kenneth Hay?

A. Yes, I am.

Q. Did you also do a sexual predator evaluation and report to court on him?

A. Yes, I did.

Q. Hand you Respondent's G and ask you to identify that?

A. That is a cover letter and evaluation report I wrote.

Q. It's to the Johnson County District Court?

A. Yes.

[p. 29] Q. And it was your opinion he was a sexual predator?

A. Yes.

Q. Have you also been working with Mr. Hay within the program under the sexual predator treatment act?

A. Yes.

Q. If I asked you the same questions regarding Mr. Hendricks regarding the treatment available to the unit would your answers be the same?

A. Yes.

Q. Has he indicated a desire for treatment?

A. Yes, he has.

Q. I'll hand you Respondent's Exhibit FF, and ask you to identify that?

A. Once again that's the same form we've been referring to in the last two cases. He chose option I have a problem of sexual deviancy and want to be involved in treatment. Signed by him on May 16th and by me as witness that same date.

Q. Has he been an active participant in the groups that you've had available on the unit?

A. Yes.

Q. Dr. Befort, I think it was alluded to briefly on your direct examination as to what would be your opinion of what a state-of-the-art sexual offender program should contain. Can you tell us what do you [p. 30] believe it should contain?

A. Okay. It's my understanding that the underpinning of a state-of-the-art program for sexual offenders, treatment program, is the group process. In other words, group sessions, group meetings are essential. And the topics and issues covered in the group process are many and varied. Some of them directly related to the sexual deviancy issues, others related to things that append to

that, such as dealing with emotional issues, dealing with psychological issues and so on, and even daily living issues. So a lot of time would be used in the state-of-the-art program by offering group sessions of that sort. Attached would also be individual counseling, individual therapy. Probably again addressing all of those same issues but on an individual basis and then maybe additional issues that might relate more to psychotherapy factors as an example. Extremely important in a state-of-the-art program also is the assessment component, talking about assessment done prior to treatment and that assessment would have a lot to do with the type of treatment offered, the intensity of treatment, that type of thing. The assessment is ongoing also to see how the individual's [p. 31] progressing. And then there are usually assessments at regular intervals in order to assess progress or lack thereof. Then the very, in terms of stuff, a plethysmograph laboratory and polygraph laboratory are also considered state-of-the-art assessment tools.

Q. Would leisure time activities such as activity therapy classes, would that be part of a program?

A. Certainly.

MR. WEILERT: I'm sorry, I didn't hear the question.

Q. Leisure time activities?

A. Yeah, activity therapy includes leisure time but it's also used to help develop skills that they might be interested in developing in terms of hands on, whether it's a hobby, whether it's a skill of some sort. Certainly

you can't spend, you know, 24 hours a day doing intensive group and individual work. There's got to be time off for things that are hopefully useful.

Q. How about educational components?

A. That would be included under what I was grouping as group process. Yes, educational modules, teaching, that would usually be in a class setting or group setting.

[p. 32] Q. Dr. Befort, where does the current program fall within this continuum of what you believe a program should contain, state-of-the-art program?

A. Where it is at right now?

Q. Uh-huh.

A. It has very little of that.

Q. Where's it going?

A. Oh, I think –

MR. WEILERT: Your Honor, I object to where it's going, it's not relevant.

THE COURT: Overruled.

THE WITNESS: Based on my observations over the last few months, the foundation for an excellent program is laid, and as I said before, it's about ready to start up full steam.

Q. And why is that, Dr. Befort?

A. Well, it just takes awhile to get things in place. It takes awhile just to get staff interviewed and hired following the state system. And some of these folks are hard

to find anyway. But quite a few have been found now and some have come aboard and some are scheduled to come aboard. So I think we're ready to start bolstering our treatment aspect.

Q. Dr. Befort, you're familiar with State Security Hospital, would the program have been in a different [p. 33] stage if it had been possible to use like a wing of State Security Hospital and place the sexual predator treatment program on?

MR. WEILERT: I'm sorry, I can't hear the question.

THE COURT: Let's take a real short recess and I'll see if we can find somebody that knows how to turn the mike on.

(A brief recess was taken, after which the following.)

Q. I think my last question, Dr. Befort, you're familiar with State Security Hospital?

A. Yes.

Q. And you're familiar with the different wings, there are four different wings?

A. Four different wings on Dillon units.

Q. Would the program have been different today had it been possible to place the sexual predator unit on one of those wings?

A. I think so.

Q. Why wasn't that possible?

A. Because a lot of things we're getting in place were already in place there, a place to have the program,

there are some clinicians there, all the support things are there, all the things needed for care in [p. 34] everyday activities are already there. The program would not have had to start from scratch.

Q. And this program literally did start from scratch?

A. Yes.

MS. HAGERMAN: That's all I have, Your Honor.

THE COURT: Anything else for this witness?

MR. WEILERT: Yes, Your Honor, thank you.

REDIRECT EXAMINATION

BY MR. WEILERT:

Q. Dr. Befort, once again you've read the sexual predator statute many times, and you're familiar with what I term the preamble to that act, are you not?

A. I'm sure I am.

Q. Okay. Let's –

A. I haven't got it memorized though.

Q. You don't have it memorized, okay, that's now number 59-29(a)01?

A. Right.

Q. This preamble to the sexually violent predator act states that the treatment to be given to these people is different than that which is available in other mental

health facilities, does it not? Not in those exact words but that's the general theme?

A. It means that it's a mental illness treatment [p. 35] techniques won't do strictly speaking for these folks.

Q. Okay. And this discussion you had with the state's counsel regarding the, I hope I say it right, ward milieu?

A. Ward milieu.

Q. Milieu, that type of treatment is available in community health centers, private hospitals, state mental health facilities, state hospitals, all of those, isn't it?

A. Most of them, yes.

Q. So that's not the specialized different modality type of treatment that's referred to in the sex predator act, is it?

A. When I was asked that question about the milieu on the sex predator program, there will be some aspects of it that are unique to the sex predator treatment program. Some of those are in place. But a lot of them are the same in terms of interacting with staff and that type of stuff.

Q. But as far as the – this is my new book and I don't have it marked up like my old one – but as far as treatment modalities that are referred to, that ward milieu in and of itself isn't a treatment modality, is it?

[p. 36] A. Well, it's a treatment modality, it's a matter of the strength.

Q. Okay. Would it be fair to say, Doctor, that the sexual, pardon me, the treatment for sexual deviancy issues that can be given through this ward milieu –

A. Excellent.

Q. – is extremely small portion of the treatment that you would foresee?

A. Right. If all they got was milieu therapy, they wouldn't get better.

Q. And –

A. Or wouldn't get well enough.

Q. And so as far as that being enough to justify a person's commitment to receive only that type of treatment, that wouldn't be right, would it?

A. I don't know if this would be my area of expertise.

Q. Okay. If you were the acting director, you are the acting director of the clinical –

A. Clinical director.

Q. If in that position you felt all you could give was this ward milieu treatment, you would feel that totally inadequate for the purpose of the statute, wouldn't you?

A. That's right.

Q. You testified that all three of these gentlemen have [p. 37] to at least some extent indicated their willingness to participate in treatment?

A. Yes.

Q. So your program, the program development is not being hampered say like the one in Washington state that was just found unconstitutional because of lack of treatment by, or pardon me, lack of participation by the inmates, that hasn't been a problem?

A. These residents have participated, yes.

Q. Now, specifically in regard to Mr. Hay, do you recall doing an evaluation back in June of 1993 on Mr. Hay? He was sent there, or pardon me, sent to Larned State Security Hospital for an evaluation?

A. What year was that?

Q. 1993.

A. I'm aware that an evaluation was done then, I'm not sure if I participated, I can't remember.

Q. I'm going to show you what's marked as Petitioner's Exhibit Number 1, and ask if you can identify that document, sir? Your signature is on the last page.

A. Yes. This is a cover letter as well as a report labeled forensic staff conference summary. And the purpose, and that's an evaluation report, and specifically in this case it's an evaluation that's called a pre-sentence evaluation.

[p. 38] Q. Wasn't it in fact, weren't you asked to determine whether a person should be sent to Larned State Security Hospital for treatment or to the Secretary of Corrections?

A. There are more options than that, but we're trying to give the court some idea about the individual's

mental state, problem areas. And we make recommendations whether it be probation, hospitalization, imprisonment, that's what we do.

Q. In your cross-examination you said that there were facilities and staff on line at the Dillon portion of the State Security Hospital?

A. Yes.

Q. That could have offered sexual predator treatment at an earlier stage in these proceedings?

A. Yes. It would not have been ready to go, but a lot of things would have been in place to build on that weren't here for the current program.

Q. So you would agree back in 1993 there was not a facility available for the type of sexual predator treatment that you would foresee?

A. On Dillon building?

Q. Yes.

A. There was not and is not.

Q. In talking about this program that you would foresee [p. 39] as a sexual predator treatment program, you said that first of all, you'd need group processes. I've seen some documentation that sets out group sessions as often as five or six times a day for an hour, hour and a half apiece, is that the type of group sessions you foresee?

A. Sessions and they could be group, would be a mixture of group and individual, yes, but very intense, very comprehensive.

Q. So you think approximately then six times six is 36 hours of treatment, group treatment per week would be appropriate?

A. Treatment and that could be individual or educational.

Q. But either in a group or individual therapy?

A. Yes, you have to have several hours a day, right.

Q. And the reason for that is that if you do things maybe for an hour or maybe two per week you don't really address the issues that need to be addressed, isn't that right?

A. Well, you can, it's just going to take forever.

Q. And your understanding of the treatment program is to prepare the people committed to it to return to society if possible, right?

A. Yes.

[p. 40] Q. And that's to be done expeditiously?

A. Yes.

Q. And to take a serious approach to doing that?

A. Yes.

Q. And up to now there hasn't been a real serious approach to doing that, has there, as far as the treatment actually delivered?

A. In terms of the needed treatment relevant to the sexual deviancy, that hasn't been delivered yet.

Q. So in his quest to be released from this program, Mr. Hendricks has wasted ten months, hasn't he?

A. In terms of treatment effects, yes.

Q. And he has not been responsible for that waste because he's said he's willing to participate, isn't that correct?

A. That's right.

Q. The only reason he and these other gentlemen have not gotten the treatment that is prescribed by statute is because it's not been available, isn't that right?

A. That's right.

Q. And to this very day it's not available, is it?

A. Today it's still not available.

MR. WEILERT: Nothing further, thank you.

MS. HAGERMAN: Nothing more of this witness,

* * *

[p. 43] MR. HOUSE: We are.

MS. ORRICK: Your Honor, may I approach and borrow that Petitioner's 1 exhibit please.

MR. HOUSE: Call Janet McClellan.

THE COURT: Come forward and be sworn.

JANET MCCLELLAN,

called as a witness in behalf of the Respondent, being of legal age and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOUSE:

Q. State your name for the record please.

A. It's Janet McClellan.

Q. And where employed?

A. At the SPT unit.

Q. SPT?

A. Sexual predator treatment unit.

Q. Where's that located at?

A. It's housed currently at the Larned Correctional Mental Health Facility.

Q. You're employed by what department?

A. SRS and have been since February of this year.

Q. Okay. Why don't you just give us a little bit about your background, your experience and your educational experiences?

[p. 44] A. I have, I began my career or careers as a law enforcement officer. I spent eight years as a law enforcement officer in a number of states, state of Kansas, Washington, Wyoming and Ohio. I spent nine years as a college professor, eight of those were Park College in Parkville, Missouri, and one year as a visiting faculty member with Washburn University in the criminal justice department there. For seven years I was a corrections manager with the Kansas Department of Corrections, entered there as the director of education, vocational

programs for inmates throughout the state. Also over these seven years I was the compact administrator for parole services, the director of training for corrections and parole personnel for the department of corrections and my last position was as a aide-de-camp to the secretary of field services and community corrections with the Department of Corrections. And again since February 20 of this year with SRS as the program director for the sexual predator treatment unit.

Q. Okay. Would you just tell me real briefly in a gross kind of sense what program director means, what your job is in relation to this program?

A. I'm sorry, I forgot in answering a portion of the [p. 45] question, I received my bachelor's degree from Park College, mid to late seventies. My master's degree is in public administration from the University of Dayton, in Dayton, Ohio, and I took an additional 66 hours of doctoral level training with the University of Kansas in their political science program, emphasis in policy analysis, criminal justice and public administration.

Q. Okay. Back to your position as program director, tell me what that is.

A. Well, the program director's position was designed with SRS is responsible for the development of the and clinical direction of the sexual predator treatment program. Also the overall administrative development, this would involve purchasing of equipment, supplies, hiring of staff, the advertisement of same such issues, all the detail from essentially paper clips to evaluation of the overall operation of the program, the personnel within.

Q. You would be largely responsible for the administration of the program?

A. Yes.

Q. Not necessarily the clinical delivery of treatment?

A. No, not the delivery of treatment.

[p. 46] Q. Okay. Why, you know, did you seek out this job?

A. Yes, I did.

Q. Why your interest in this type of a program?

A. As I've indicated a moment ago I began my career in law enforcement. I was an undercover narcotics agent with the KBI for sometime: Then I went on to the State of Washington where I had an opportunity at that time because I fit, essentially fit the physical description of the young ladies that Ted Bundy was killing.

MS. ORRICK: Your Honor, I object. Clearly this has no relevancy in this matter. We can see where this is going. This is not, has nothing to do with her adequacy to be a program director which is what she's here to testify for today.

THE COURT: Well, we can go into her qualifications briefly, let's don't spend the whole morning.

Q. Yeah, got to be brief.

A. I'm sorry.

Q. Your interest in this type of a program obviously interested in whether, you know, you wanted to do this or you had to do this?

A. Right. Essentially the types of experiences that I've had over the years and the minimum [p. 47] qualifications and the extended qualifications for the position of the program director was advertised by SRS and to come to, quite frankly, to come to central Kansas as well enticed me, so I applied.

Q. Who was it that actually hired you?

A. I was hired by the commissioner in February, who was George Vega of mental health, and mental retardation services with SRS.

Q. When you arrived here in Larned at the sex predators treatment program, what did you find?

A. It had, as Dr. Befort stated earlier, it had just moved from the Young Building on the campus of the hospital over to the Larned Correctional Facility several days before I arrived. I arrived on February 20th, I believe that was a Monday. And then I took over the administration management of the program at that time. And it was, we were provided space by the Larned Correctional Facility administration, an office for myself, the offices, an office for the staff, as well as activity day room, day-time rooms for the residents who were assigned there. And of course, they were, had their rooms in the pod wing.

Q. Mr. Hendricks was there at the time?

A. Mr. Hendricks was there, Mr. Blumenshine was there, [p. 48] Mr. Hay had not arrived.

Q. Let me show you what's been marked as Respondent's, looks like Q and R. Can you identify those?

A. Yes.

Q. Tell me what they are.

A. Exhibit Q is the administrative organizational chart as of February 20, 1995, when I arrived in Larned. It shows that Janet Schalansky was the acting secretary of SRS, Mr. George Vega being the commissioner of mental health retardation. The director of mental health was vacant at that time. I was the [sic] then program director. A Mr. Terry Davis was still initially assigned temporarily the SRS director of quality and review and field services and he had several contacts at that time. I believe he was the SRS representative who would come back and forth to the unit prior to my arrival. And then Dr. Befort is there as a consultant. Mr. to bin [sic] Wright was forensic therapist assigned to the unit and there are I believe ten psychiatric security specialist [sic] who were on the unit at that time.

Q. Does that describe kind of the staff pattern that existed at the time you arrived?

A. Yes, it does.

[p. 49] Q. Positions available, okay. And Exhibit R?

A. Exhibit R is a memorandum letter that I sent to Mr. Vega expressing a, well just overview in terms of the type of treatment process programing [sic] that I thought was important. I wanted to give him an overview and essentially it's a review distillation of readings, research, search for documentation that I'd been conducting at that time in terms of programing. And the types of elements that affect the people in the field, the experts in the field

saying should be parts and pieces of the consideration of the development of the unit.

Q. Is it fair to say it's kind of a first report back to your boss commissioner on what you found and where you thought the program ought to be headed?

A. Yes.

Q. Why don't you tell us what you did from there?

A. Well, from this particular, these, as you indicated, these are beginning documents, and from this as a result of the feedback I received from both my supervisors, I was also in contact with Dr. Thomas Lock, out of Lawrence, Dr. Freeman Longo, the Vermont consortium which is known as the Safer Society, various and sundry other state agencies and various and sundry other states in terms of this [p. 50] programing. Now Kansas was the first, I'm sorry, the second state to initiate this particular program. So we were having to start from the floor in a sense in terms of developing of the programs. And from that what I did was to continue on pulling those particular materials together, gathering, borrowing, assisting with input from the individuals that I've just mentioned to deal and more fully developed program with its attached elements needs and regards to the way in which the unit should operate as well as the way in which staff and residents would interact and the types of personnel. Since that point in time, that being the original organizational chart, I have, I have hired the rest of the staff, so to speak. I still have two positions at this time that remain open. One of them is an office assistant 3, the other is of course, as has been pointed out, the clinical director which is being advertised and the rest of the positions

that were available at that time have been filled. And those individuals are on board as of the 11th of next month. In terms of pulling the program together, I have ordered all the materials, the instrumentalities, the plethysmograph, instrumentality has arrived, contract requests have [p. 51] been let for polygraph, other sorts of research assessment, instrumentalities, training materials, devices for the residents, as well as the staff have been purchased and are in place at this time.

Q. Okay. In summary it would appear that since you have arrived you've started almost at ground zero and you have built a program?

A. Yes.

Q. Is that correct?

A. Yes, there was essentially nothing here when I arrived.

Q. I'm going to hand you Respondent's Exhibits S and Q, have you look at those.

A. All right. Respondent's Exhibit S is a September 11 organizational chart.

Q. It's not quite September 11th yet, can you explain?

A. Well, this is the one that will be effective. The reason it's September 11th all the individuals I have hired and have been given permission to hire as a result of special protect designation will be on board by September 11th. The organizational chart begins with Rochelle Chronister as secretary of the SRS.

MS. ORRICK: Your Honor, I object. She's testifying. If they want to try and admit they can

* * *

[p. 58] BY MR. HOUSE:

Q. I wanted you to kind of contrast for us kind of a structure that was in place and frankly, I don't care whether you use Exhibit Q or Plaintiff's Number 2. But I want you to tell us what kind of program was in place when you came in terms of staffing and the people that were available to deliver treatment and what you're going to have now.

A. Exhibit Q shows those people, shows the positions filled, the people available in the program to deliver service treatment when I arrived. Exhibit S shows–

MS. ORRICK: Your Honor, again I object. It's speculative.

THE COURT: overruled.

A. What you have – did you wish me to speak? I'm sorry.

Q. Yes, what does S add that wasn't there at the time you had, at the time you arrived and is depicted by Q?

A. As I indicated there was a, one forensic therapist at that time and ten psychiatric security specialist [sic]. At this time I have two forensic counselors, and have now 12 psychiatric security specialist [sic]. In addition to that I have hired two [p. 59] activity therapists one a one; two social workers, one bachelor's level, one master's level; and an evaluation psychologist who is a master's level

psychologist to the program and my secretary. All these positions have been filled at this time.

Q. They're all filled?

A. Yes.

Q. The hiring completed, the individual may not yet be there but will report to work on or before September 11th?

A. Yes.

Q. Now Exhibit U, do you have that?

A. Exhibit U?

Q. Tell me what that is.

A. These are copies of state personnel, division of personnel services position description forms. With persons who have been hired, their names and the positions that they have assumed in the sexual predator treatment program.

Q. Okay.

A. At this time. These are all the names of all the people that have been hired.

Q. And do all the position descriptions correspond with what's outlined in the order chart, Exhibit S?

A. I'm checking to – were, in the September, line S [p. 60] there are several that aren't here. My position description is not here, nor is C.B. Counts, Janet Schalansky or the secretaries.

Q. Okay. It would be your position and all of the superiors in the state?

A. Right. As well as –

Q. Administration above you?

A. Well, and Chuck Hernandez who was the public administrator for me in SRS, those positions, the Topeka positions are not here.

Q. Mr. Hernandez is located where?

A. In Topeka with SRS.

Q. So position descriptions are not there, the commissioner, secretary?

A. Right.

Q. Mr. Hernandez in Topeka and yourself?

A. Right. All the rest of them are present.

MR. HOUSE: We'll offer U, Your Honor.

MS. ORRICK: Your Honor, could I voir dire please.

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MS. ORRICK:

Q. Ma'am, when I looked at those briefly earlier, there's effective dates on there, does that mean,

* * *

[p. 62] A. What the effective dates shows –

MS. ORRICK: Your Honor, Your Honor, I really don't have any other questions. We would object clearly

this is misleading evidence. We have testimony that they had no staff. Now we have, yes, now we have staff. Your Honor, I think it's irrelevant and the foundation is poorly lacking at the least.

THE COURT: Overruled. Exhibit U is admitted into evidence.

CONTINUED DIRECT EXAMINATION

BY MR. HOUSE:

Q. In addition to the developing this hiring of staff and organizing them and hiring the staff, what else have you done in evolving a program since your arrival?

A. Well, after hiring the staff and staff they come on board they are provided with training, and to that end I have hired Dr. Thomas Lock to provide 39 hours of intensive basic level training of working with sex offenders, sexual predators. He provided that training over a three month period of time. In addition to that there were, there are two manuals that the staff, all the staff coming on board are required to read, go through and study. One is [p. 63] called The Best Kept Secret, which is the title of a book regarding child sexual abuse. The other is an intermediate level training set of modules for staff working with sex offenders.

Q. Show you what's marked Respondent's V and Respondent's Exhibit W, are those the two manuals you were just referring to?

A. Yes.

Q. Those are a copy of the training materials that were utilized in the 39 hour training course you put together?

A. That's right, that's right. The materials have been, the intermediate level training for staff working with sex offenders was materials that I gathered from the State of Wisconsin in addition to that based on the research available. And The Best Kept Secret is a, essentially a book with training module components written by one Florence Rush. In addition to that, the 39 hour direct contact training with Dr. Lock there are, there is also a test that staff take at the end of the training.

Q. Show you what's marked Respondent's Exhibit X, can you identify that?

A. Yes, this is a copy of the basic information training test that I developed to give staff to see [p. 64] how well they had understood, read, were familiar with the materials.

Q. Is the training put on on the location?

A. On location. I contract with Dr. Lock to come out three times two full days apiece and provide the direct training for staff. In addition to that, I videotaped all the materials, well, all the presentations that Dr. Lock conducted at that time. I have approximately twelve 120-minute VCR tapes that I continue to use and have staff observe and use as their basic training for the sexual predator unit.

Q. And all staff are required to take this training?

A. All staff are required to take this training.

Q. Those that are presently on duty have completed the training?

A. There are some who are on duty at this point who have just joined the sexual predator unit and they are at various phases of their training. In addition to the type of training that we've just mentioned here they, of course, are required to do orientation with the corrections facility so that they may understand the runnings of a maximum level security facility as well as other basic training. So they are in process of being trained at this [p. 65] point.

Q. And those staff that will be arriving between now and September 11th will also go through that training?

A. Yes.

MR. HOUSE: we'd offer Exhibits V, W and X.

THE COURT: Any objection?

MS. ORRICK: Yes, Your Honor. Could I voir dire again please?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MS. ORRICK:

Q. Ma'am, my understanding is that you were a police officer and you have a degree in political science and criminology, correct?

A. Public administration.

Q. Okay. And prior to coming to the sexual offender treatment program, did you do any master's in counseling?

A. No, I did not.

Q. Any social work?

A. No.

Q. Any work in psychology?

A. No.

Q. Any work in psychiatry?

* * *

[p. 69] that 1 could draw from a bigger one if we would like to do that. We would strongly object to any of these components being admitted at this time.

THE COURT: Overruled. V, X, W and X are admitted into evidence.

CONTINUED DIRECT EXAMINATION

BY MR. HOUSE:

Q. We have staff, we have them trained are there additional materials besides what's up there that are available to them to kind of continue their training during the course of their employment?

A. There is and there will be ongoing. These particular, this particular program is in a state of development. I have materials, fifty, sixty thousand dollars worth of materials both for staff development as well as programs

for the sexual predators themselves and for use in group, as individuals or in small group use.

Q. Hand you what's been marked Respondent's Exhibit GG, can you identify that?

A. Yes. This is a list of materials or instruments that are or have been purchased and are owned by the SRS sexual predator treatment unit at Larned, Kansas. Essentially it is a four- or five-page document which lists the books or instruments, the [p. 70] author and brief abstract of the work itself or the item that was purchased.

Q. Those are all to be found within the unit at your program?

A. Yes.

Q. And available to staff?

A. Yes, they are.

Q. What was that again?

A. This item?

Q. The exhibit number, I'm sorry?

A. Is this GG.

MR. HOUSE: GG. Offer GG, Your Honor.

THE COURT: GG, any objection to GG? MS. ORRICK: Your Honor, we would object to insufficient foundation.

THE COURT: I'm sorry, I can't hear.

MS. ORRICK: I'm sorry, Your Honor, on insufficient foundation. I don't even know that these books exist or who wrote them. We would object, Your Honor.

THE COURT: It does seem we're getting a little bit far afield.

MR. HOUSE: She just testified that these materials are available. It's a list of them so the court can have some kind of idea what materials are [p. 71] available. Dr. Befort also testified that a lot of things had been purchased, that adequate money had been made available to this program.

THE COURT: These are materials available to this training program?

MR. HOUSE: That's correct.

THE COURT: GG is admitted into evidence.

Q. (By Mr. House) Why don't you tell me a little bit about the basic philosophy you've adopted for the sexual predator program?

A. Essentially it would probably be best expressed by saying it's a 24 hour holistic treatment approach. The idea behind that has a number of elements involved with it. One, that every staff member and every resident in all of their interactions, the reason and the purpose and direction of the training of the staff members is to provide them with a base line of understanding dealing with sexual predators and their concerns. Therefore it provides for an opportunity for staff to interact and specifically focus on the issues and concerns of these individuals as it regards their papers and documents, diagnoses and under the direction of Dr. Befort. So that they may intercede or interrupt any item or behavior that would be reflective of their [p. 72] sexual deviance or sexual violence issues to be able to intercede at those points, as well

as other issues, interpersonal, organizational and unit operations that also hinge off that. Additionally, as Dr. Befort pointed out, he provides what I've asked him to, which is a community treatment meetings. And in those community treatment meetings, there is an attempt by Dr. Befort to provide a place where the residents can speak about direct issues to their confinement, their sexual violence issues, and then staff sits in on that as well. It's a community meeting because both the security staff are there also.

Q. What we're getting in here I think is what Dr. Befort referred to as kind of the ward milieu treatment, is that correct?

A. Yes, it is.

Q. I've heard you break that down into several parts, what's contained within that kind of, you call it a 24-hour holistic treatment environment, is that correct?

A. Yes.

Q. Why don't you kind of take them one at a time, break down those elements?

A. In the total overall, well, it begins with being [p. 73] able to do pre-test and then therefore of course, post-test, the type of treatment, instrumentalities of testing the psychological sex offenders' specific or aspects of sex offenders' histories doing, the history data gathering.

Q. Let's do it this way.

A. Okay.

Q. Let me just start and talk about the role of staff on the unit with regard to the residents there, okay. One

role I suppose would be just guarding them, another would be somehow involved in the treatment program itself. Which do we have and how does that work?

THE COURT: Maybe you could make a proffer and that would speed things up.

MR. HOUSE: Okay.

THE COURT: Seems like you're testifying right now.

MR. HOUSE: I'm trying not to. What I would like to do, kind of the six elements of your holistic program and the first one had to do with staff familiarity with residents and their history and so forth.

THE WITNESS: It's an ongoing, it's an ongoing process of familiarity. It goes back, they read the [p. 74] files, they read the historical files of each and all of the residents when they come in in order to familiarize themselves with the offender's behavior. Also to familiarize themselves with the evaluation reports provided. Along with that, as I've mentioned before, and as these materials presented is the training that they receive in terms of operating and working with people in a sexual treatment program. Sexual offenders treatment program. In addition to that there are processes within the unit in terms of general behavior, what we call the 72 hour forms which has to do with the expectations of behaviors on the unit. The staff are aware of those and the residents have signed those particular forms as well as many outcomes of process. The whole idea of the various steps in terms of both the staff and resident training is that they see the, the staff sees how the residents are interacting because, if you

will, the predatorial behavior, the offending behavior can occur in various and sundry settings even while on the unit. Even while on the unit that unless we're aware of it so that we can have them modify what it is that they're doing in such a way as to stop that behavior that's a part of the treatment –

[p. 75] Q. Okay.

A. – process.

Q. Okay, I think we're getting there now. Staff are given general training in predator-type behaviors, correct?

A. Yes.

Q. They have that knowledge. You said they become thoroughly familiar with the histories of the individual residents?

A. Yes, they read their histories and ongoing unit files.

Q. Would that include other behavior patterns?

A. Yes, that is provided by the various psychological reports and reviews, yes.

Q. Okay. What if staff were to see behaviors that are similar to either their historical patterns or the things that they've been generally taught?

A. Well, at that point in time the purpose of the whole training and that the training that Dr. Lock both provided then and through the materials continues to interact with them to stop the behavior, refocus the

behavior or redirect the behavior firmly or very firmly or gently and provide them with an alternative of behavior.

MS. ORRICK: Your Honor, I would ask that the

* * *

[p. 79] materials, kind of constitute the total of it and we'll be done.

THE COURT: Okay.

Q. (By Mr. House) All right. Okay. Let me show you Respondent's Exhibit T, have you identify that.

A. Yes, this is the mission statement to the unit.

Q. Okay. What does that mean?

A. Well, it means that there are certain basic elements and purpose for the unit. And this is a document that developed sometime ago and then as the focus and direction provides direction for the ongoing development and the underlying goals of the program.

MR. HOUSE: Offer T.

THE COURT: Any objection?

MS. ORRICK: I can't find it. I can't object, I can't find it. Your Honor, we don't have any objection to it.

THE COURT: Admitted.

MS. ORRICK: They can't show they're doing it, that's fine.

Q. Okay. You have mentioned that an assessment of each resident is done, is that correct?

A. Yes.

Q. Let me show you Respondent's Exhibit Y, can you identify that?

[p. 80] A. Yes, this is actually several different documents. The first one is a sex offender history with essentially instructions and definitions for social workers to fill out the offender history documents. In addition to that is what is called a sex offender screening tool research edition, which has a scoring, again a scoring mechanism as well as instructions to the technician or individual filling out the forms as initial part of the assessments.

Q. When is that utilized?

A. I beg your pardon.

Q. When would it be utilized?

A. This is coming into utilization.

Q. And when in the process of the resident being on the facility would this be utilized?

A. This would begin within 72 hours of their coming on to the unit and after a continuous period for 45 days if need be to render this information from court documents and other historical.

MR. HOUSE: Would offer Y, Your Honor.

MS. ORRICK: Your Honor, it's irrelevant. She said it's going to be used. It's not in the assessment packet, has not been used, it's clearly irrelevant.

THE COURT: Sustained.

[p. 81] Q. Let me show you Respondent's Z and BB, can you identify those?

A. Yes. Z is a resident's handbook, and essentially its purpose is as a part of it, it's the orientation manual for the residents coming on the unit. Much of this is as it currently exists with some of these being items that will come into existence, particularly the face program, the face program essentially, as well as some clothing issues and restrictions on items of that might be out.

Q. Okay.

A. And in addition is this BB? Is a memorandum which does an overview of the various shift activities that, this is a document that, that reflects that which will be coming into existence.

Q. Z is the handbook that would be handed residents describing the type of program that is to a lesser extent now being offered and will be offered very shortly here?

A. Yes.

Q. And BB is a daily schedule?

A. Yes.

MR. HOUSE: We'll offer Z and BB.

MS. ORRICK: Your Honor, same objection as to Y. It's clearly irrelevant to this matter. And [p. 82] they've testified it's not in use yet. None of these clients have ever seen it as far as the resident handbook. And as far as the schedule, she also testified that that will be coming into effect and that's not what our clients' schedules are like now.

THE COURT: Maybe I didn't follow this testimony closely as I should have. Is the handbook now in existence?

THE WITNESS: The handbook exists now. Many of the portions of the handbook issues are in effect at this time.

THE COURT: Has the handbook been distributed to the residents of the program?

THE WITNESS: No. It's not been distributed because it would be an in-class orientation specifically walking through, not only that which currently exists but any additions thereto.

MR. HOUSE: Clearly on the cusp here, Judge, of transition to a much more extensive program than has existed.

THE COURT: I don't think the petitions are going to rise or fall on what might be in the future. I think they're going to rise or fall on what is there now. Objection sustained.

[p. 83] MS. ORRICK: Thank you, Your Honor.

Q. (By Mr. House) You recognize the three gentlemen here?

A. Yes.

Q. They are presently on the unit. Just going to show you Respondent's A, B, C and D, if you would identify those?

A. These are journal entries, journal entry of judgment and order for journal entry nunc pro tunc of Leroy

Hendricks, journal entry Paul Lewis Blumenshine, journal entry of judgment Ken Hay, as stated therein Ken Hay on the order of journal entry nunc pro tunc.

Q. Are those the court orders on which authority you hold these three gentlemen in the sex predator treatment program?

A. Yes, it is.

MR. HOUSE: Offer A, B, C and D.

THE COURT: Any objection to A, B, C and D?

MS. ORRICK: If I could look at it briefly.

THE COURT: Are they the same as attached to your answers?

MR. HOUSE: They are, Your Honor.

MS. ORRICK: Your Honor, I don't object to A, B or C. However D, if the court will note, is in Mr. Hay's case specifically an order for journal entry

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[p. 87] been found to be sexually violent predators and likely to commit that type of activity if not detained. And we have taken precautions we think are necessary.

THE COURT: Request denied. See you after lunch.

(A recess was taken for the noon hour, after which the following proceedings were held.)

THE COURT: I apologize for the brief delay. But I trust you agree with me that it's justified that any

time constraints you felt you were previously under are now removed. I believe when we recessed Ms. McClellan was on the stand.

MR. HOUSE: Correct, Your Honor.

THE COURT: You may return to the witness stand and you're still under oath, ma'am.

Q. (By Mr. House) I believe where we left off was that I had just asked you did you maintain records on individual residents at the unit?

A. Yes, we do.

Q. Just briefly explain to me what kind of things would go into the record and how they're created?

A. There is a separate medical record that's maintained by the health care services at the facility. There [p. 88] is a set of historical records which are those reports, psychological, psychiatric reports, treatment reports and that, that have previously been viewed and is part of the information that Dr. Befort looks at. In addition to that there are the day-to-day logs which contain legal documents, some of the medical treatment requests their activities actions on the unit, those that have been observed by the staff, a variety of other miscellaneous records and documents in terms of requests for materials, devices purchases that they wish to make, et cetera.

Q. With regard to the records that deal with their activities on the unit, who is it that makes those records?

A. Those progress notes are maintained both by the staff that are on the unit, most specifically Dr. Befort in regards to his treatment meetings with the residents.

Q. Do the regular staff that provide 24-hour day care make entries into the record?

A. Yes, they do. In those progress records regarding their behavior, their interaction with other residents, their interactions with the staff, particularly citing any instances of behavior that [p. 89] are not appropriate for their treatment processes, and the interactions, interventions of the staff at the time of those behaviors.

Q. Do these records then include whatever assessments are made of the individual residents?

A. Yes, they do.

Q. Would it include whatever plans for treatment that might have been developed?

A. Yes, they include some of the documents that have previously been offered, which is the refusal or acceptance of treatment or the degree of that, plus the plans originally devised by Dr. Befort and carried out in some fashion by Mr. Wright and then the ongoing treatment processes, yes.

Q. So they would record then whatever treatment processes have gone on?

A. Yes.

Q. And would record whatever other activities occurred on the incidents?

A. Going to the library when that was done because we do share the library use, smoke breaks in the yard activities, all of those, everything that can occur within a 24-hour period.

Q. Okay. And we've made copies of all those records and I'll just set them up here and have you identify [p. 90] them. Okay, start with –

MS. ORRICK: Your Honor, if you'd like we can just stipulate to the admission of what's in there.

THE COURT: They offer to stipulate.

MR. HOUSE: That would be fine.

Q. Just let me say then that Respondent's H, I and J are the records of Leroy Hendricks?

A. Yes.

Q. Exhibits K, L and M are the records of Paul Blumenshine?

A. Yes.

Q. And Exhibits N, O and P are the records of Kenneth Hay.

THE COURT: Do you accept their stipulation?

MR. HOUSE: I do.

THE COURT: They're admitted into evidence.

MR. HOUSE: I have nothing else.

THE COURT: Cross?

MS. ORRICK: Thank you, Your Honor.

CROSS EXAMINATION

EY MS. ORRICK:

Q. Ms. McClellan, you're the program director, correct?

A. Yes.

Q. And as the program director you help set up a program, I believe that's what you testified to [p. 91] previously?

A. Yes.

Q. And you don't have anything to do with the delivery of that treatment, correct?

A. That's correct.

Q. Now, the clinical director, he is the person who is responsible for therapy and the treatment?

A. That's correct.

Q. And this is in your program composition, correct?

A. Yes.

Q. So as the person, if the person responsible for the therapy says there's no treatment, you as the program director can't refute your clinical director's position, correct?

A. That would be correct.

MS. ORRICK: Thank you, ma'am. Nothing further.

THE COURT: Anything else for this witness?

REDIRECT EXAMINATION

BY MR. HOUSE:

Q. Have you had any discussions with Dr. Befort in regard to the kinds of treatment that need to be provided to these residents?

MS. ORRICK: Your Honor, I object. It's clearly outside the scope of cross.

* * *

[p. 94] a lot of the exhibits are introduced, for lack of a better phrase, in triplicate, one for each of the petitioners. Would it be appropriate and adequate for me to examine the documents relating to Mr. Hendricks and not the rest of the documents? Would that give me a fair picture of what's going on?

MR. WEILERT: I believe that would work fine with the petitioners, Your Honor.

THE COURT: State have any objection?

MR. HOUSE: You're speaking with regard to the unit records?

THE COURT: That's correct.

MR. HOUSE: Yes, that would be okay.

THE COURT: We'll take a recess. I would anticipate that I would be prepared to announce a decision in approximately 30 to 45 minutes.

(A recess was taken, after which the following proceedings were held.)

THE COURT: Thank you for your patience. First I want to say that those exhibits that were admitted into evidence are returned to the party offering them under the provisions of the Supreme Court rule.

Secondly, I note that this is an action filed under the provisions of Chapter 60 of Kansas Statutes Annotated section 1501, et sequence. 1

[p. 95] Thirdly, I want to say at the outset it's important to recognize that the decision that I'm rendering today is intended to be a legal decision and not a medical or psychiatric decision.

The petitions that were filed allege that the restraint of the petitioners by the respondents is wrongful for roughly six reasons or five reasons. First, they allege that the statutory justification for restraint of a person committed under K.S.A. 59-29(a)01, et sequence, is to provide care and treatment for persons committed under its provisions. The statute 59-29(a)07 says in part, the person shall be committed to the custody of the secretary of Social and Rehabilitation Services for control, care and treatment until such time as the person's mental abnormality or apparent disorder has so changed that the person is safe to be at large. They allege in their petition that there is no clinical director or clinical staff employed at the program designated as the sexual predator treatment program. There is apparently employed a temporary acting clinical director, but there is in fact no permanent clinical director employed at the program. There is clinical staff employed at the program, at least there are a number of persons employed who [p. 96] possess title designations referring to psychiatric services and

pstchological [sic] services. I conclude from the evidence that there is a clinical staff. I make no conclusion regarding their talent, training or abilities as that is not particularly in issue here.

It is alleged in the petition that no treatment is being provided to the petitioners or any other persons committed to the program designated as the sexual predator treatment program. In support of this allegation the petitioners advance the testimony of Dr. Charles Befort, who is the chief psychiatrist at Larned State Hospital. It is argued and suggested that Dr. Befort has testified that there is no one providing treatment to these people, the petitioners at the program. His testimony was in fact that there was no one except for him giving treatment. That is what he testified to during direct examination. He did testify, however, that at one time during the beginning of the program Mr. Hendricks received treatment from a Mr. Wright, but that Mr. Wright apparently was not there when the other two petitioners arrived at the program. Mr. Hendricks apparently benefitted from some treatment that the other two petitioners did not receive.

[p. 97] I conclude from the testimony that a treatment program consists of a number of things. It consists of physical facilities in which to provide the treatment that the program is designed to produce, it consists of staff personnel which are retained for the purpose of providing and delivering the treatment that the program is designed to produce. It consists of treatment programs, or perhaps they should be called modalities of treatment, but they are nevertheless schemes designed to provide treatment to persons in need of that treatment. And lastly, at least it consists of materials and instrumentalities

designed for the purpose of delivering the treatment programs at the hands of the staff personnel.

From the testimony here today it is clear that the physical facilties [sic] of a treatment program exist. That staff personnel incomplete, but nevertheless some staff personnel exist. If I understand the testimony of Ms. McClellan correctly, she is missing two people. One a key person, the clinical director, and the other a clerical person which I would not characterize as being a key person.

Some treatment programs are in place. Certainly it cannot be denied that the petitioners [p. 98] are receiving the benefits of group therapy on at least two occasions per week when Mr. Befort is able to make that schedule. He apparently is distracted from his treatment responsibilities by other responsibilities imposed upon him at the state hospital.

There is also a program that is called ward milieu, which apparently is recognized as a competent means of treatment. There is some question that presented by the petitioners and some testimony that indicates that if that were the only modality of treatment they might be there for a long time. It is, nevertheless, at least some program of treatment and there is testimony that it is not intended nor designed to be a self-sufficient program of treatment or the only program of treatment. There is testimony that the materials and instrumentalities of treatment are present.

I have to conclude that the allegation that no treatment is being provided to any of the petitioners or other persons committed to the program designated as a sexual

predator treatment program is not true. I find that they are receiving treatment.

The fourth allegation of their petition is in [p. 99] fact a conclusion. And that conclusion alleges that without treatment being provided that they are the subject of nothing more than unlawful penal incarceration. Having concluded that they are receiving some forms of treatment, I then find that conclusion to be invalid.

The petitioners further allege that they are wrongfully restrained and that they are denied the right to due process of law and they are being denied their liberties as guaranteed by the 5th and 14th Amendment to the United States Constitution.

Lastly, they allege that their wrongful restraint violates the prohibition against cruel and unusual punishment as set forth by the 8th Amendment to the United States Constitution. They are being held under the color of law as the result of orders issued by courts in which determinations were made that they were sexual predators pursuant to the provisions of K.S.A. 59-29(a)01, et sequence.

I conclude that their restraint does not violate their 5th and 14th Amendment rights, nor does it violate their 8th Amendment rights and neither is it cruel or unusual.

There are no Kansas cases particularly in point on this inasmuch as 59-29(a)01 is a new statute. [p. 100] But there is a Kansas case that is relatively close. And that is *State versus English*, 198 Kansas 196. In which these same issues were raised under the sex offender act that was in place some years ago. Almost identical arguments were

presented and in that case the Kansas Supreme Court expressed that these are justifiable goals and that the manner in which they are being, manner in which the commitment is being conducted is for humanitarian purposes and does not violate the 5th, 14th Amendments to the United States Constitution or the 8th Amendment. So based upon *State versus English,* I find that the incarceration here is not a violation of their 5th or 14th Amendments nor their 8th Amendment nor is it cruel or unusual punishment.

The petitions are hereby dismissed and the costs are assessed to the petitioners.

You will be notified of your rights to appeal by your attorneys. This decision, of course, is appealable by you and I'm sure that they will explain to you how that appeal will occur. Are there any questions on behalf of the petitioners?

MR. WEILERT: No, Your Honor, thank you.

THE COURT: Thank you very much. Are there any questions on behalf of the state?

* * *

SELECTED LEGISLATIVE HISTORY OF THE KANSAS SEXUALLY VIOLENT PREDATOR ACT, KAN. STAT. ANN. 59-29a01 *et seq.*

Approved: 3/10/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 22, 1994 in Room 514-S of the Capitol.

All members were present except: Marge Petty (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Attorney General Robert Stephan [sic]
Representative Gary Haulmark
Gene and Peggy Schmidt
Mary Ann Souse
Kelly McCaffrey
Mary Bush
Carla Stovall, Attorney
Jan McCloud, Instructor at Kansas Law Enforcement Training Center

Others attending: See attached list

Chairman Moran announced the issue of capitol punishment would be debated on Thursday, February 24, at 10:00 a.m. in Room 514-S.

SB 666 – fraudulent representation on employment application

SB 667 – inmates sentenced to custody of secretary

Senator Vancrum gave a brief description of *SB 666* and *SB 667* and said they are an outgrowth of Speak Out For Stephanie Task Force, a group that formed in Johnson County after the rape and murder of Stephanie Schmidt last July, 1993. He said they both deal with limited, but important aspects of the sexual predator problem.

SB 525 – sexually violent offense

Senator Vancrum gave a brief description of *SB 525* and said it serves to protect our communities from those offenders who pose the greatest danger to society by providing for commitment and treatment of sexually violent predators. He said *SB 525* is based on a 1990 State of Washington Law which authorized civil commitment of sexually violent predators to the custody of the Department of Social Rehabilitation Services. He said the bill would require a civil jury to find beyond a reasonable doubt that the person is a sexually violent predator based on a psychological evaluation. Senator Vancrum said the fiscal note prepared by State of Kansas, Division of the Budget, was based on the assumption that 90% of the maximum number of individuals that would meet the

criteria for sexually violent offenders would be committed under this act. Senator Vancrum indicated Washington statistics suggest an actual 10% annual commitment rate. (*Attachment No. 1*)

Representative Gary Haulmark testified in support of *SB 525* and provided written testimony (*Attachment No. 2*).

Attorney General Robert Stephen testified in support of *SB 525* and provided written testimony *Attachment No. 3*).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 22, 1994.

Peggy Schmidt, mother of Stephanie Schmidt, testified in support of *SB 525*. Stephanie was raped and murdered in July, 1993. She said the individual who confessed to raping and killing Stephanie had been released after serving half of his sentence for the rape of a college student in 1983. Mrs. Schmidt said only 2% of the rapist [sic] are ever convicted and if they are they serve an average of 3 years in prison.

Gene Schmidt, Father of Stephanie Schmidt, testified in support of *SB 525* and provided the book "Missing Still, Stephanie Rene Schmidt, The Life. The Death. The Dreams" (*Attachment No. 4*). Mr. Schmidt gave a video presentation of Stephanie's life.

Kelly McCaffrey testified in support of *SB 525* and provided written testimony (*Attachment No. 5*).

Mary Livermore Bush testified in support of *SB 525* and provided written testimony (*Attachment No. 6*).

Carla Stovall testified in support of *SB 525* and provided written testimony (*Attachment No. 7*).

Jan McCloud, Instructor at Kansas Law Enforcement training Center testified in support of *SB 525*. Ms. McCloud works with the Wichita Police Department dealing with sex crimes.

Tom Locke, PhD, Kansas Psychological Association provided written testimony (*Attachment No. 8*). in support of *SB 525*.

Mary Ann Souse, a victim of rape, testified in support of *SB 525*. She said the man convicted of raping her received 15 years to life on a plea bargain and it is possible for him to be paroled in 7.5 years on good behavior. She asked that the law be changed for convicted rapists to serve their full time, not half.

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 22 at 12:30 p.m. in Room 527-S, 1994.

State Of Kansas

[SEAL]

Topeka

Senate Chamber
State Capitol
Topeka Kansas 66612-1504
(913) 296-7361

Bob Vancrum
Senator, Eleventh
District
Overland Park,
Leawood.
Stanley, Stilwell
In Johnson County
9004 W. 104th Street
Overland Park,
Kansas 66212
(913) 341-2609

Committee Assignments
Vice-Chairman: Energy
And Natural Resources
Member Ways And
Means Judiciary
Member Commerce,
Labor And Regulations
Committee, National
Conference On
State Legislatures
Member: Environmental
Task Force, Council
On State Governments

TESTIMONY FROM SENATOR BOB VANCRUM
TO THE
SENATE JUDICIARY COMMITTEE

RE: SB 525

The Sexual Predator Act (SB 515) serves to protect our communities from those offenders who pose the greatest danger to society by providing for treatment and commitment of sexually violent predators until they are no longer a danger. Based on a 1990 Washington law

which authorizes the civil commitment of sexually violent predators to the custody of the Department of Social and Rehabilitative Services for control, care and treatment. The bill requires a civil trial in which the court or jury finds beyond a reasonable doubt that a person is a sexually violent predator based on a psychological profile showing a mental abnormality or personality disorder making him likely to engage in predatory acts of sexual violence. Furthermore there is an opportunity for regular review of the issue of whether the offender remains a danger to society.

The bill is narrowly tailored to focus on the small number of habitual sex offenders who, because of their psychological makeup, pose an immediate danger to the public as soon as they are released from prison. According to the *Seattle Times*, for example, about 25 commitment petitions have been filed since Washington state's law as passed in 1990. Of those, 12 people were committed and several others are pending.

Although the official fiscal note for SB 525 places the cost of implementing the Act in Kansas at more than $8.6 million, it should be noted that this figure assumes a commitment rate of 90% of the maximum number of individuals meeting the criteria for sexually violent offenders. A more realistic figure is $898,000, which assumes a commitment rate of 10% of the persons who might be committed under the bill or 33 people. Please carefully review the attached material from George Vega of the SRS showing ranges of cost with different assumptions as to numbers committed. Moreover, the planned changes under mental health reform likely will provide the state with space to house those found to be sexually

violent predators, further reducing the cost of implementation.

The real life tragedies of families like the Schmidts are reason enough to pass this bill, to ensure that these few sex predators are provided treatment and not released back into society until they no longer pose a danger to the community. Moreover, the bill accomplishes this through a scheme that has been held to the constitutional [sic]:

The bill meets the requirements for civil commitment set forth by the U.S. Supreme Court in *Foucha v. Louisiana* in that it:

1) is narrowly tailored to serve a compelling state interest

2) requires proof the detainee suffers from a mental illness or severe personality disorder

3) places the burden of proof as to dangerousness on the state.

The bill is consistent with due Process in serving a compelling state interest and in placing upon the state the burden of proving the detainee is both dangerous and suffering from a severe personality disorder or mental illness.

Finally, like the statute upheld by the Washington Supreme Court, the bill does not serve any punitive goal. It is civil in nature and thus does not offend the double jeopardy clause, which applies to criminal matters.

[SEAL]
JOAN FINNEY, GOVERNOR OF
THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

January 28, 1994

The Honorable Robert Vancrum
The State Senate
State capitol Building, Rm. 449-N
Topeka, Kansas 66612

Dear Senator Vancrum:

Senate Bill 525 proposes to provide a system of civil commitment to a facility operated by SRS for persons completing a prison sentence for specified violent, sexual offenses. Determining annual costs for a new program is difficult without a full understanding of the specific goals of the proposed legislation.

We contacted the Department of Corrections and determined there were 331 individuals released during FY 1993 who met the criteria stated in Section 2 of this bill. We are not able to make an accurate estimate on how many of these individuals would be committed to SRS custody. The projected annual cost for each resident of the State Security Hospital for FY 1995 is $57,966. The first year costs could range from (assuming an average stay of 6 months for new admissions) $989,473 for 10% of the released population to $9,593,373 for 100%.

Currently, the State Security Hospital at Larned, Ks. has approximately 30 available beds. The first year of Mental

Health Reform downsizing closed 30 adult beds, which allowed us to correct overcrowding on the Security Behavior Ward, but created no new available beds. The final two years of reform could make from 40 to 60 beds available, assuming appropriate remodeling. Should the expected bed need created by SB 525 exceed 70 to 90 beds a new facility would be required. The Attachment provides construction estimates for various sized secure facilities. These estimates were based upon the costs of construction of the Correctional Mental Health Facility in Larned, Ks.

Please do not hesitate to contact George D. Vega at 296-3773 if you need any additional information.

Sincerely,

/s/ Donna L. Whiteman
Donna L. Whiteman
Secretary

DLW:DAJ:hb

cc: Senators Bogina, Bond, Burke, Corbin, Emert, Feleciano, Frahm, Hardenburger, Harris, Kerr, Langworthy, Lawrence, Martin, Morris, Oleen, Papay, Parkinson, Ramirez, Ranson, Reynolds, Rock, Salisbury, Sallee, Steffes, Tiahrt and Vidricksen

SENATE BILL 525 CARE AND TREATMENT

10% ANNUAL COMMITMENT RATE

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
ANNUAL COST	57,966	59,705	61,496	63,341	65,241	67,198
CENSUS:						
BEGINNING	0	33	63	90	114	136
ADMISSIONS	33	33	33	33	33	33
DISCHARGES	0	3	6	9	11	13
ENDING	33	63	90	114	136	156
TOTAL ANNUAL COST	898,473	2,865,839	4,704,454	6,460,783	8,155,155	9,810,978

100% ANNUAL COMMITMENT RATE

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
ANNUAL COST	57,966	59,705	61,496	63,341	65,241	67,198
CENSUS:						
BEGINNING	0	331	629	897	1,138	1,355
ADMISSIONS	331	331	331	331	331	331
DISCHARGES	0	33	63	90	114	136
ENDING	331	629	897	1,138	1,355	1,551
TOTAL ANNUAL COST	9,593,373	28,655,405	46,918,779	64,459,584	81,348,886	97,653,114

State Of Kansas

[SEAL]

Topeka

House Of Representatives

Gary Haulmark
Representative
30th District
Johnson County
8709 Gallery
Lenexa, Kansas 66215
(913) 894-2035
Room 181-W.
Capitol Bldg.
Topeka, Kansas 66612-1504
(913) 296-7636

Committee Assignments
Vice Chair
Economic Development
Member
Transportation
Rules & Journal
Joint Committee On
Economic Development

Testimony in Support of S.B. 525

Thank you Mr. Chairman and members of the committee for the opportunity to testify today in favor of S.B. 525, otherwise known as the Sexual Predator Act.

As you may know, this bill was one of five pieces of legislation designed this past fall by an Ad Hoc Sexual Offender Task Force in Johnson County. The task force was composed of legislators, law enforcement officials, parole board members, probation officers, concerned citizens and of course, Gene and Peggy Schmidt. This legislation was based on current law in the state of Washington. It seems to be serving it's [sic] purpose there and has been found constitutional.

Lines 25 to 29 get to the heart of the matter; sexually violent predators generally have antisocial personality

features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The Sexual Predator Act would go after anyone convicted of, or charged with a sexually violent crime and who suffers from a mental abnormality or personality disorder. Our task force saw statistic after statistic which indicated these people will re-offend 50% to 90% of the time if allowed the opportunity.

Very simply, the bill would allow the prosecuting attorney to file a petition before the release of the inmate, alleging that this person is a "sexually violent predator. Upon filing of the petition the judge would determine if probable cause exists and an evaluation would be conducted by a qualified professional. Then within 45 days, the court would conduct a trial to determine if the person was a sexual predator. If the court determines that the person is a predator, they would be committed to the custody of SRS for control, care and treatment.

Mr. Chairman, it is time for us to step up to the plate and do something about an obviously serious problem. Lee Iacocca said, "Lead, follow or get the hell out of the way". Well, let's be leaders, let's pass this bill and begin to deal with a problem we can not just sweep under the rug.

I'll be glad to stand for any questions.

[SEAL]

State Of Kansas

Office Of The Attorney General

2nd Floor, Kansas Judicial Center,
Topeka 66612-1597

Robert T. Stephan
Attorney General

Main Phone: (913) 296-2215
Consumer Protection: 296-3751
Telecopier: 296-6296

Testimony Before Senate Judiciary
Senate Bill 525
By Robert T. Stephan, Attorney General
February 22, 1994

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to rise in support of Senate Bill No. 525.

From your therapeutic perch as legislators, you have an opportunity to pass what might be the most significant preventive criminal justice legislation to be presented in this 1994 session of the Kansas Legislature. Most new laws against criminal conduct tend to provide punishment after the victimization has occurred. Senate Bill 525 will act prospectively and be preventative of criminal conduct and not just punitive. You have a rare opportunity to pass a law that will keep dangerous sex offenders confined past their scheduled prison sentence. As I am convinced none of them should ever be released, I believe you, as legislators, have an obligation to enact laws that will protect our citizens through incapacitation of dangerous offenders.

Under the provisions of the sentencing and parole system in effect prior to July 1, 1993, a violent sex offender could serve the full sentence and be released without any relevant safeguards for the public. In the same manner under the sentencing guidelines, a violent, sex offender will be released at the end of the sentence imposed. With either system, there has been no adequate legal provision to continue incarceration of violent sexual predators past the period of mandatory incarceration. Senate Bill 525 fills the void and provides for the continued incapacitation of sex offenders through an appropriate constitutional incarceration of persons who commit sexually violent offenses and continue to be a sexually violent predator at the expiration of their period of imprisonment.

If there was ever a law which should be passed unanimously be the legislature, this is the one.

TESTIMONY

SENATE BILL 525

February 22, 1994

Mr. Chairman and Members of the Senate Judiciary Committee:

Thank you for the opportunity to speak before you. My name is Kelly McCaffrey, and I am speaking today as a student of the law, a woman of this community, and a citizen of this state. And I am speaking today of personal tragedy, public outrage, and unspeakable cruelty.

And I am speaking out for Stephanie in support of Senate Bill 525.

In anticipation of this legislation, I have spent the last few months extensively researching the implications of civilly committing sexually violent predators. My findings will be published this Spring in the *University of Kansas Law Review*. Ultimately, I believe that the Task Force has presented the legislature with a workable and constitutional solution. I will leave those arguments, however, for the experts to present. I would like to focus, instead, on an aspect of SB 525 that the Committee may not have heard. Specifically, I would like to address an argument that I anticipate opponents of SB 525 will present to this Committee, if past years serve as any indication.

Inevitably, several terms and definitions used in SB 525 will be a source of great consternation for some opponents of the bill, particularly those in the field of psychiatry. Such terms include "sexually violent predator," "mental abnormality," and "personality disorder." The argument is that such terms are merely legal, with no

clinically significant meaning and no recognized diagnostic use.

First, it must be emphasized that such terms in identical statutes have been upheld as constitutional. I would like to move beyond the constitutionality of those terms, however. In doing so, I urge this Committee to look beyond the language of the law, to the story that gave rise to the bill in the first place. Here, the story is that of the brutal and senseless rape and murder of a 19-year-old girl. And it is the story of a man with a history of sexual offenses. It is a story told by her parents, her sister, her friends and her community, and it is filled with grief, anger and frustration. That tragic story is before you today as SB 525.

The problem lies in translating the language of life into the language of law. Inevitably, much is lost in that translation. We are forced to cast the story of Stephanie into another form, that of a statute. Unfortunately, the violence, the pain, and the outrage do not lend themselves very well to the generalized and categorized language of the rule. This difficulty emanates from the fact that "legal rules are a specialized form of language that must respond to the human experiences that gave rise to them in the first place. Yet legal rules must also structure that response in a way that allows them to be applied consistently and reliably." (J. Christopher Rideout, *So What's in a Name? A Rhetorical Reading of Washington's Sexually Violent Predators Act*, 15 U. Puget Sound L. Rev. 781 (1992)).

In the real-life story of Stephanie's murder, the nature of a man like Don Gideon is defined by his actions, by his

words, by his cruelty. His nature is defined by the tremendous loss that Gene, Peggy, and Jeni Schmidt have suffered at his hands. The voices of the people in this community can tell you that Don Gideon should not have been free to commit this heinous crime.

In a statute like SB 525, on the other hand, the nature of a man like Gideon must be ascertained through overt definitions and structured categories. The law requires it. So, faced with the arduous task of translating the passion and pain of Stephanie's death, the story underlying the statute, into the objective, voiceless language of the statute itself, the Task Force has used the phrase "sexually violent predator." In ordinary society, the type of person who would constitute a sexually violent predator is readily understood. Most would agree that Don Gideon is a sexually violent predator. But, statutes cannot rely on the collective beliefs of ordinary society. The overriding demands of the language of the rule have silenced the story behind that rule.

Stephanie has told her story. How many more stories need to be told before the legislature will listen?

Speaker: Mary Livermore Bush Date: Feb. 22, 1994
Subject: Passage of Sexual Predator Act

I never knew Stephanie Schmidt, and from all reports, that was my loss. As a matter of fact, I didn't know Gene, Peggy, or Jeni Schmidt until I "met" them through the media as they walked through the nightmare of their daughter's brutal death.

Unlike the Schmidts, I have never been the victim of a terrible crime, nor has any member of my family. That is one of the reasons I am here today, urging passage of the Sexual Predator Act. I fear there is a tendency among lawmakers and legislators to think it is only the victims of horrible crime, like the Schmidts, who care about the passage of this bill. It simply isn't true. I believe that as citizens, my family and I have a basic right to protection. Currently that right is being shamefully violated because the justice system works against me, allowing monsters like Don Gideon, Stephanie's murderer, to roam the streets – when he was supposed to be locked away. Stephanie really had no chance, you know. Neither would my child or yours in the same situation. Not only was Stephanie not allowed to know about Gideon's hideous past as a convicted rapist, she expected that since he was walking the streets, he was safe. In fact, he was following the tendency of the typical sex offender; he was searching for another victim. Had the Sexual Predator Act been in effect a year ago, Gideon would have served his time, and before release been required to spend time in a mental institution where chances are, his horrible tendencies would have been discovered. And Stephanie Schmidt would be alive today.

It has been said that perhaps the Schmidts are too close to this, too emotional to be objective. I believe that each and everyone of us must put ourselves in the Schmidt's shoes – and see our child's face where Stephanie's was. Only then can we even come close to realizing what these monsters take from us – and that we all MUST do something to stop them!

As a citizen and parent, my plea today is this: sentence these criminals harshly – and keep them locked up. When they have served their time, don't just open the prison door and watch as they search for another innocent victim, like Stephanie Schmidt.

Please help me protect my children by allowing my rights as a law-abiding citizen not to be overshadowed by leniency to social deviates.

/s/ Mary L. Bush
Mary Livermore Bush –
Feb. 22, 1994
11732 High Drive Leawood,
KS. 66211
(913) 3399912

TESTIMONY OF CARLA J. STOVALL
SENATE JUDICIARY COMMITTEE
SB 525
FEBRUARY 22, 1994

The sexually violent predator bill – a bill that would keep still sexually violent inmates off the streets after their criminal sentence has been served. Not passing this bill would allow convicted rapists and child molesters to walk through prison gates and back into our communities to rape and molest again.

And rape and molest they will. One study of 126 rapists that I recently read indicated that they had an average of 7 victims each. An F.B.I. study of serial rapists showed an average of over 20 rapes each in their histories.

The statistics on child sexual abuse offenses is absolutely staggering. A study funded by the National Institute of Mental Health reported on 453 sexual offenders who had abused an average of 52 girls or 150 boys each. The same study indicated that the typical offender begins molesting children when he is 15 and molests an average of 117 children – most of whom do not report the molestation.

Because of the nature of sexually violent crimes and the psychological makeup of those who are prone to commit them, we must take extraordinary precautions to protect society from them. This means enacting this bill into law across the state of Kansas. We cannot open our prison doors and let these animals back into our communities. If we do – we are accomplices to the atrocities which they will surely commit.

Let me share with you for a moment the utter frustration I experienced as a member of the Kansas Parole Board. I would routinely see sexual offenders and pass them as long as possible (which was usually one year). I would see them each year and deny release again and again. But when the inmates reached their conditional release date (which was one-half of their maximum sentence), they had to be set free.

The file would come to the Board only for the purpose of setting conditions for their release. We would establish requirements such as: Report to the parole officer. Maintain employment. Have no contact with the victim or victim's family. Attend sexual offender treatment.

As I would write out those conditions, a knot would always grow in my stomach. I knew the rapists or child molesters were being turned loose on an unsuspecting public to reoffend. I knew there was at least one woman or one child, but probably more, who were going to fall victim to this animal. It was as certain as the sun rising the next morning. And there was nothing I could do to prevent it. That was the sickening thing. We were condoning the future victimization – permitting it – allowing it. Because we couldn't stop it.

Donald Gideon is the despicable individual who has caused the heightened awareness of the desperate need for this bill. Gideon was a convicted rapist and was in our Kansas prisons while I was on the Parole Board. I saw him 3 times and denied him release 3 times because of his prior rape conviction and because of his demeanor and behavior. And yet he was given his freedom after serving all of his sentence. He was not given his freedom one day

early – he served all the time the state had sentenced him to. But we gave him his freedom. The freedom he needed to rape a young woman in April and the freedom to then rape and murder Stephanie in July. Had a bill like this become law when it was first introduced a few years ago, I am certain Donald Gideon would never have been released. He would have been found to be sexually violent. You must do everything within your power to ensure this bill becomes law. Do not lose interest in it and let it languish like your predecessors.

The situation in Kansas now is no better with sentencing guidelines than under indeterminate sentencing. There are a total of 24 sexual crimes under current Kansas law and only 4 carry longer sentences under guidelines **when using the worst criminal history** (which most inmates do not have) and that is because all 4 were misdemeanors under the old system. In addition, 13 of the 21 child sexual abuse crimes carry presumed probation unless the inmate has a substantial criminal history.

The lesson is that under guidelines fewer child sexual abuse crimes will result in incarceration because of the high number which carry presumed probation. For those that do go to prison, the sentences are shorter than what could have resulted under the old system. For example, an inmate convicted of raping an adult woman or a child, who has no prior criminal history and earns all his good time, will only spend 4 years and 7 months behind bars. Those particular crimes carried a possible maximum of life imprisonment under the old system and the inmate did not ever have to be released. Our streets are much less safe now. The sexually violent predator bill is absolutely critical!!

This bill would allow us to stop the sure and certain victimization. It would allow us to keep the sexually violent offenders locked up indefinitely. This is our obligation to provide for public safety in this way.

(LOGO) KANSAS PSYCHOLOGICAL ASSOCIATION
February 3, 1994

Senator Marge Petty
State Capital Building, Room 523-S
Topeka, KS 66612

Dear Senator Petty:

Thank you for providing me with the opportunity to review SB 525, the proposed legislation regarding sexually violent predators (SVP). I am sorry that my response was not more immediate. I did want to consult with my other colleagues in KPA so that our response would represent a broader perspective than my own. I hope the information provided is still timely and useful.

Page 1, lines 25-29

Sexual offenders with antisocial personalities or antisocial traits are certainly problematic in terms of treatment and recidivism. My worry is that the statute over-focuses on those conditions, to the neglect of equally problematic conditions. Equally problematic are adults receiving the diagnosis of Pedophilia, Not Limited to Incest, Exclusive. These are adults who have an established sexual preference for prepubescent children and are unlikely to find adult sexual relations meaningful or satisfying. These

adults tend to have many victims, are not likely to engage in physical violence, and have little appreciation for how their behavior damages children. They maintain well-entrenched cognitive distortions regarding their offending behavior that prevent them from considering new information and changing their behavior. These men are the sort of offenders the general public thinks of when asked to think of a typical pedophile. On the other hand, some offenders who have only one or two victims and whose crimes are incestuous in nature can also be seen as SVP because of the denial and distortions surrounding their behavior towards their own children or step-children. Many times their behavior is just as entrenched and aggressive as other types, even though confined to familial relationships. Finally, adults presenting with sexually sadistic behavior patterns would be likely candidates for SVP designation. It would not be productive for this legislation to focus too narrowly on antisocial offenders. At the same time, you can begin to appreciate the scope of the problematic behavior that would be addressed with such a bill. The costs of commitment and confinement should be considered in this regard especially in light of the refractory nature of these conditions.

Page 1, Line 29-30

This statement confuses the likelihood of re-offense for SVP with the likelihood of re-offense for sexual offenders in general. The probability of recidivism for the former group is likely to be much higher than for the latter group. It is important to note that the vast majority of sexual offenders, particularly sexual offenders against children, are convicted of sexually violent crimes as

defined by this statute. These adults almost always present with a mental abnormality as defined by DSM-III-R. The majority of offenders would not need to be committed under this statute to ensure community safety. I am concerned about the public reaction that would result if all offenders convicted of these offenses are seen and treated by the public and the judicial/mental health system as SVP's. Clarity and specificity in our conceptualization and our language seems essential.

Page 1, line 39

Professionals in this area do not think of "curing" sexual offenders; the focus is on equipping the offenders with the skills to control their impulses toward deviant behavior. The efficacy of teaching these skills to most sexual offenders is well established, in spite of comments to the contrary made to your committee by individuals unable to discriminate among sexual offenders. Conversely, the difficulties involved in teaching these skills to SVP's is also well established.

Page 2, lines 5-8

I wonder if it is possible to expand the definition of SVP to include offenders convicted of one sexually violent offense who complete a reputable sex offender treatment program and then go on to commit a second sexually violent offense. That should stand as evidence that even with appropriate intervention, the offender is not able or willing to control sexually deviant behavior. In this case, the determination of SVP would be made after the second conviction but before incarceration. It is clear that the

best predictor that incarceration/treatment will not function as a deterrent is an individual's past failure to benefit from those learning experiences.

Page 2, line 25-26

Criminal sodomy includes consensual, though illegal, homosexual behavior. If consensual gay/lesbian adult sexual behavior is defined as a sexually violent offense *and* that person has any sort of "mental abnormality," *and* that person enters a relationship with the purpose of being sexual with another adult, then it seems to me that the person is committing another sexually violent offense which is very predictable. Could that person be committed under this statute? Aggravated criminal sodomy (lines 27-28) could cover crimes of oral/anal assault against a child or those behaviors toward an adult who did not consent. Would it be possible to remove criminal sodomy from the list of sexually violent offenses without damaging the intent of the statute?

Page 2, lines 5-12

The text speaks to the prediction of violent behavior. The literature regarding the prediction of violent behavior is not conclusive; some would say it is not even promising. I suspect challenges will most likely occur at this point in the process with revolving "expert witnesses" testifying on both sides of the argument. Any evaluator will be ethically required to address the validity of his or her predictions. I wonder if it would be possible to have the court appoint an expert acceptable to all parties to evaluate the alleged SVP. Would that be more judicially and financially efficient? At any rate, it should be understood

that any predictions of future behavior in this realm may have limited validity.

Page 3, lines 7-15

The statute addresses how the "agency with jurisdiction" will notify the county in which the offender was charged. That agency will typically be DOC. DOC will likely have information that the offender is a SVP because treaters working with the offender will have reached that conclusion. Presently, offender treatment is provided by a private contractor operating within DOC. Consequently, according to statute, valid and informed consent needs to be obtained from the offender in order to release treatment information to DOC. The offender can revoke his or her release at any time, and information provided to DOC would be significantly restricted at that point. The offender could leave the system after serving his or her maximum time, the treaters could see that offender as a SVP, but because the consent to release information about therapy had been revoked, DOC could not be alerted to set the necessary process in motion. I wonder about a provision in the statute to address that possible scenario.

Page 3, lines 30-32

The text addresses issues of immunity from liability for "agencies with jurisdiction, its employees, and officials." I would suggest that the immunity extend to employees of private contractors working within DOC, as well as to experts retained by the court to address pertinent issues within this process or to other practitioners who might be involved in the legal process around this statute.

Page 4, lines 1-4

If probable cause exists to believe that the offender is a SVP, the court appoints a person "professionally qualified" to examine the offender to confirm that finding. That professional must have access to all pertinent information, including that information that might be held by treaters working within but not employed by DOC. Many professionals are prohibited by statute from disclosing treatment information without the offender's consent; the client's right to privilege must be protected or the professional is guilty of unethical and illegal behavior. It is imperative that the evaluating professional have access to all information so that the determination of whether or not the offender is a SVP does not rest only on the professional's observations of and interview with the offender. I wonder if it would be possible to address access to information held by private contractors employed by DOC as well as other possible sources of information.

Page 5, lines 33-38

I believe the probability that a professional would take a position that an individual once found to be a SVP is no longer dangerous is very low. Our ability to change an individual's sexual preference for children or eliminate the urge to express sexual and violent impulses together is limited. Lengthy periods of commitment with little likelihood of release are almost inevitable. Perhaps that is simply the goal of this statute. In my opinion, adequate facilities and treaters to address this pattern of deviant behavior does not exist within the Department of Social

and Rehabilitation Services. Significant funding to establish and maintain such a state of the art treatment facility and monitoring program would be essential.

In regard to your question about mandating post-incarceration supervision, I believe that any individual who has committed a sexual crime could benefit from post-incarceration supervision *and treatment*. Perhaps the length of supervision/treatment could be arbitrarily set at five years for each of the sexually violent offenses identified in his bill. In many cases, it would be possible to relax that requirement once the parole officer and the therapist are able to assess the offender's reintegration into the community and the offender's ability to implement his or her relapse prevention plan.

Two points come to mind, following that. Firstly, to be most efficient, there would need to be very close coordination between those providing treatment to offenders during incarceration and those providing follow-up treatment. That coordination occurs in other states under the auspices of a statewide agency that coordinates all aspects of sexual offender treatment. Perhaps such an approach should be considered in Kansas.

Secondly, if community agencies are to be expected to provide quality treatment over the long term to individuals reintegrating into the community, resources must be made available to those agencies. Upon release from DOC with a conviction for a sexual offense, particularly a sexual offense against a child, offenders are often underemployed, if not unemployed, for extended periods of time. Consequently, their financial resources are inadequate to pay for the necessary treatment. In my opinion,

the provision of quality treatment following incarceration will not be a viable financial possibility for agencies if the state does not allocate sufficient funding. The short-sighted solution of mandating post-release treatment but not providing funding will only result in the illusion that the problem has been effectively addressed.

I hope you find these thoughts useful. I know that SVP's and the heinous acts they commit command immediate attention in our society. I would hope that the legislature remembers, however, that the vast majority of victims of sexually assaultive crimes are not victimized by SVP's. I would hope that eventually attention and monetary resources are directed to this population of victims and offenders, as well. If every SVP in Kansas could be identified and committed under this proposed statute, hundreds of women and children would continue to be assaulted; I believe the damage those assaults produce and the impact on society of failing to effectively intervene with prevention and remediation strategies in these cases is profound and is, in certain ways, more damaging than the profound damage that results from the crimes committed by the SVP.

Thank-you again for the opportunity to respond. As a member of the KPA's legislative sub-committee on forensic issues, we would be more than happy to provide information and feedback on this and other bills related to the criminal justice system. Please feel free to contact myself, our sub-committee chair, Dr. Robert Reitz (913/782-2100), or our legislative chair, Dr. David Rodeheffer (913/234-4743).

Sincerely,

/s/ Tom Locke, PhD
Tom Locke, Ph.D. Rsj

Approved: 3/15/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 23, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Paul Morrison, District Attorney, Johnson County
Jim Blaufuss, Schmidt Task Force
Detective Sergeant Craig Hill, Leawood Police
Howard Snyder, Kansas Alliance for Mentally Ill
Jim Karlin, SW Guidance Center, Liberal

Walter Thiessen, Community Mental Health Division of Prairie View, Inc., Newton
Joyce Lile, Christian Center for Prisoners Rights
Lynn Stemm, Victim Assistance Coordinator, Kansas District Attorney
Raymond L. Spring, Distinguished Professor, Washburn University School of Law
Carla Dugger, American Civil Liberties Union

Others attending: See attached list

SB 666 – fraudulent representation on employment application
SB 667 – inmates sentenced to custody of secretary
SB 525 – sexually violent offense

Paul Morrison, District Attorney, Johnson County testified in support of SB 525 and provided written testimony (Attachment No. 1). He said we should try to target those sexual offenders who have the propensity to reoffend and this could be done through the adoption of civil commitment procedure.

Detective Sergeant Craig Hill, Leawood Police testified in support of SB 525 and provided written testimony (Attachment No. 2).

Mr. Morrison introduced Greg Canova, Chief Deputy Attorney General for the state of Washington who provided via telephone conference call testimony regarding the sexual predator bill in Washington. He has been involved in their state's litigation and overseeing the program in Washington. Mr. Canova said this bill applies to a very small group of offenders. There has been an average of 300-400 convicted sex offenders per year since this bill went into affect in June, 1990. After screening, there has only been 111 referred to the Attorney General's

Office since 1990. Out of the 111, they filed on 28. He said they developed a standard that before they file a civil commitment petition against a person they must have more than one prior conviction and a provable pattern of prior sexually violent. Mr. Canova said the Washington law was found to be constitutionally permissible in August, 1993 when the Supreme Court of Washington upheld the statute in a 6 to 3 opinion.

Paul Morrison, District Attorney, Johnson County recommended amendments to SB 525, to add language requiring filing a petition within 30-45 days.

Jim Blaufuss, member of the Schmidt Task Force testified in support of SB 525 and provided written testimony (Attachment No. 3).

Howard Snyder, Kansas Alliance for Mentally Ill testified in opposition to SB 525 and provided written testimony (Attachment No. 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 23, 1994.

James Karlan, South West Guidance Center testified in opposition to SB 525 and provided written testimony (Attachment No. 5)

Joyce Lile, Christian Center for Prisoners Rights testified in opposition to SB 525 and provided written testimony (Attachment No. 6).

Walter Thiessen, Community Mental Health Division of Prairie View, Inc., Newton testified in opposition to SB 525 and provided written testimony (Attachment No. 7).

Lynn Stemm, Victim Assistance Coordinator, Kansas District Attorney provided written testimony in support of SB 525 (Attachment No. 8).

Raymond L. Spring, Distinguished Professor, Washburn University School of Law provided written testimony regarding SB 525 (Attachment No. 9).

American Civil Liberties Union provided written testimony in opposition to SB 525 (Attachment No. 10).

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 23, 12:30 p.m., Room 531-N., 1994.

COMMENTS TO MEMBERS OF
SENATE JUDICIARY COMMITTEE

RE: SEXUAL PREDATOR ACT – SENATE BILL #525

FEBRUARY 23, 1994

I'm here today to testify in support of Senate Bill Number 525. Much attention has been given recently to the question of how best to keep the public safe from sex offenders. As we struggle with this question, one fact becomes absolutely clear; a small number of offenders commit the vast majority of criminal activity.

As can be seen from the attached article from the September, 1991, *Journal of Interpersonal Violence,* active sex offenders commit an incredibly high number of crimes in comparison to their arrests. For example, the 1985 study by Freeman-Longo of self-reporting of sex offenders in a forensic mental health program indicated that the 53 offenders reported a total of over 25,000 sex offenses that they had perpetrated. While the child molesters in the group average 1.5 arrests per man, their self-reports yielded over 20,000 sex offenses. Other studies have buttressed these findings.

I feel the best way to deal with this small but persistent group of offenders is through a civil commitment procedure such as the Sexual Predator Act. This act is designed to apply to very few offenders. However, those offenders, once incarcerated, should make a big difference in victimization rates. In the State of Washington, where this has been law since 1990, approximately 30 people are in various stages of the program. In August of 1993, the Supreme Court of Washington approved the constitutionality of this law.

The advantages of this bill are that it incapacitates those who truly oppose the greatest danger to society. As such, it is much less expensive than massive across the board sentence increases for sex offenses. This is the new type of legislation which "targets" specific offenders for removal from society. The down side, however, is that because it is so new it is largely untested nationally. As such, as in Washington, there is some risk of legal problems. It is, however, a step forward. I truly believe it is a good piece of legislation that needs to be passed by this body.

Attachments:

1. Excerpt from the *Journal of Inter-Personal Violence*, September, 1991

2. Confiscated letter from an inmate serving time with the Kansas Secretary of Corrections for attempted child molestation to another inmate discussing their plans upon release.

Thank you for your time.

/s/ Paul J. Morrison
Paul J. Morrison, District Attorney
Johnson County, Kansas

Using a computer-administered interview, self-reports of past criminal behavior were obtained from 99 institutionalized sex offenders. The sample contained both rapists and child molesters who had been mandated to receive specialized treatment. Offenders disclosed an enormous amount of undetected sexual aggression, a finding consistent with other self-report studies. Also striking was the high rate and variety of nonsex offenses. According to interview responses, nearly 20,000 nonsex crimes were committed during the year prior to institutionalization, with rapists contributing a disproportionate share. Still, child molesters, including those whose only known crime was incest, were very active in assault and property crimes. The potential for utilizing sex offender self-reports in empirical research is discussed. Preliminary evidence of validity is presented.

SELF-REPORT OF CRIMES COMMITTED BY SEX OFFENDERS

MARK R. WEINROTT
Oregon Social Learning Center
MAUREEN SAYLOR
Western State Hospital

Although crime statistics and victim surveys can be useful in evaluating overall trends in the amount and reporting of crime, they provide no dependable information about the distribution of crimes among known offenders. It is a foregone conclusion that in the realm of sexual aggression, the number of offenses committed by most perpetrators exceeds those documented in law enforcement files. Indeed, it has been shown that many rapists and child molesters are chronic perpetrators and have avoided

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Authors' Note: Correspondence regarding this manuscript should be addressed to Mark R. Weinrott, RiverPlace, Suite 307, 0305 SW Montgomery Street, Portland, OR 97201.

apprehension for dozens – and in some cases, hundreds – of sex crimes (Able et al., 1987; Freeman-Longo, 1985; Groth, Longo, & McFadin, 1982).

This finding is based on perpetrator self-report, a promising method of obtaining offense histories. Intuitively, it seems unlikely that anyone would disclose illegal acts that have gone undetected. However, when individuals know that the information is obtained anonymously or held confidential from legal authorities, self-report has often proved to yield valid measures, initially with juvenile delinquents, and more recently, with adults. Several methods have been used to ascertain the validity of self-reported criminal activity: (a) official record checks to see whether documented arrests and convictions are self-reported (Erickson & Empey, 1963; Gibson, Morrison, & West, 1970; Hardt & Peterson-Hardt, 1977; Hirschi, Hindelang, & Weiss, 1980; Reiss & Rhodes, 1961); (b) the known group method that examines self-reports of two or more groups that can be expected to differ in criminal activity (Erickson & Empey, 1963; Farrington, 1973; Hirschi, Hindelang, & Weiss, 1980); (c) comparison of self-report with reports from peer informants (Gold, 1966, 1970) or treatment staff (Jones, Weinrott, & Howard, 1981); (d) polygraph examinations of respondents answering self-report questions (Clark & Tifft, 1966); (e) retest stability of self-report results (Dentler & Monroe, 1961; Farrington, 1973); and (f) lie scales or internal consistency within self-reports (Clark & Tifft, 1966; Hardt & Peterson-Hardt, 1977; Nye & Short, 1957). Based on these studies, the criticism that large numbers of offenders will either under- or overreport criminal behavior appears to be false.

Following the pioneering efforts of Porterfield (1946) and Wallerstein and Wyle (1947), favorable psychometric appraisal of delinquency self-report inventories has resulted in their widespread use in epidemiological and etiological studies (Elliott, Huizinga, & Ageton, 1985; Erickson, Gibbs, & Jensen, 1977; Farrington, 1973; Gold, 1966; Mann, Friedman, & Friedman, 1976; Nye & Short, 1957; Patterson, Capaldi, & Bank, in press). The technique has subsequently been applied to evaluation of legal dispositions (Dunfod, Osgood, & Weichselbaum, 1982; Lincoln, Teilmann, Klein, & Labin, 1977) and treatment programs (Jones, Weinrott, & Howard, 1981; Weinrott, Jones, & Howard, 1982).

Three self-report studies of adult sex offenders have all shown a much higher frequency of sex crime than might ordinarily be predicted on the basis of official records. Broth, Longo, and McFadin (1982) surveyed 83 rapists and 54 child molesters, all of whom were incarcerated. Responding to a brief, anonymous questionnaire, the rapists admitted to a mean of 5.2 rapes per man as compared to only 2.8 that were documented. The average child molester had been convicted only once, yet the self-reported mean was 4.7 sexual assaults per man. For reasons that are not well explicated, the 9 subjects who self-reported the highest frequency of sexual assault were omitted from the group summary. Therefore, the discrepancy between known and unknown offenses may actually have been higher.

Using the same data collection procedure, Freeman-Longo (1985) obtained self-reports from 23 rapists and 30 child molesters in an institutional forensic mental health program. For the rapists, the total number of arrests for a

sex crime was 48, or about 2 per man. The same men reported a total of 5,090 sex crimes (or about 221 per man), including 319 child molestations and 178 rapes. The child molesters averaged about 1.5 arrests per man whereas their self-reports yielded over 20,000 sex offenses, including nearly 6,000 sexual assaults of children and a surprising 213 rapes of adult females.

In the most comprehensive self-report study to date, Abel et al. (1987) assessed 561 mixed sex offenders who had "voluntarily" sought evaluation or treatment at two outpatient psychiatric clinics. Structured clinical interviews of 1-5 hours followed presentation of a videotape on confidentiality safeguards. As in the aforementioned studies, questions were confined solely to sexual misconduct. Over a quarter-million sex offenses were reported, with 23.5% of these involving direct physical contact with a victim. There were over 900 rapes disclosed by 126 self-described rapists. The mean number of rapes (and victims) was about 7 per man, and the median was 1. The 371 self-avowed child molesters (some of whom admitted to rape as well) confessed to 38,671 acts involving illicit contact. The mean number of victims was 150.2 for nonincest homosexual pedophiles, 19.8 for nonincest heterosexual pedophiles, and about 1.8 for incest offenders. The corresponding medians were 4.4, 1.3, and 1.3. The investigators found that the probability of being arrested for a sex crime that included touching was only about 3%.

The present research differs from other self-report studies of sex offenders in several important respects. First, it employees an automated interview rather than a personal interview with a researcher, Binik, Westbury, and Servan-Schreiber (1989) have shown that individuals

may be more willing to disclose sensitive sexual information when interviewed by a computer than in face-to-face situations. Ultimately, some variation of the interview might constitute a useful criterion measure for evaluating sex offender treatment programs because reliance on official recidivism measures is replete with flaws (Furby, Weinrott, & Blackshaw, 1989). Second, an attempt was made to incorporate modest validity checks. Other surveys of sex offenders have failed to appraise the psychometric integrity of the measures extracted from their questionnaires or interviews. Third, it sought information on both sex and nonsex offenses. Fourth, inquiries were made about the use of force, weapons, and substance abuse in connection with sex offenses. Finally, the present study critically examined the common practice of classifying sex offenders on the basis of their commitment (or instant) offense, given that those who have committed multiple types of sex offenses might be more the rule than the exception (Able et al., 1987).

* * *

Presenter:

Detective Sergeant Craig Hill
Supervisor of Criminal Investigations
Leawood, Kansas Police Department

President: The Lost Child Network
National Child Resource Center
Dedicated to the Education, Awareness, and Recovery of Children Victimized by Criminal Abduction and Sexual Exploitation.

Age: 44 Years of Service: 24

I extend my warmest thanks to all of the members of this committee for allowing me to make this presentation.

I appear before you today as police officer with over 24 years of service, and as the President and Co-founder of a Nationally recognize [sic] Child Resource Center. Unfortunately, I have experienced the devastation of Criminal Sexual Assault, Rape, Sodomy, and Murder in recent investigations such as Stephanie Rene Schimdt, and through my involvement with the Polly Klaas, Sara Wood, Andre Parsons and Stephanie Crane cases.

Each tragedy destroyed the lives of entire families . . . and in each case the suspect was a paroled sex offender.

Every year many Kansans are forced to face the fear that when a son or daughter disappears, they might never see their children again. We all spend our lives teaching our families not to be afraid . . . , only to be careful. ***But being careful is not working.*** Unfortunately we live in frightening times. We educate our children to beware of those individuals that prey upon them, posing as teachers, day

care center operators, scout leaders, or religious counselors. These pedophiles infest our communities looking for the opportunity to sexually assault a child.

They are organized, they have legal representation, and many pedophile organizations such as NAMBLIA or the RENE GUYON SOCIETY have turn [sic] to lobbyist [sic] in an effort to convince the Legislators in some states, to reduce the age limits for legal consent.

How, as a society, are we to react when one of our children is raped or sodomized by someone they've learned to trust?

What can I say to a parent after telling them a man confessed to sodomizing each of their six children?

How do I convince them to allow our legal system to take responsibility when they learn the same man was released after raping another child at gun point?

How do I convince myself to trust the justice system when I've entered our court rooms only to try the technicalities and not the truth?

How, as a professional law enforcement officer, can I accept the parole of a convicted sexual offender who has acknowledge [sic] their sickness is controlling them . . . even thought [sic] they may want to change?

Our wives and daughters have found it necessary to adjust their lives in order to deal with the high risk of sexual assault . . . vicious confrontations with individuals who do not see punishment as a deterrent . . . individuals who have confessed that their only motivation was for the lust . . . control . . . greed . . . or violence.

Many blame their childhood. Others blame society. Donald Giddeon blamed you and I . . . the State . . . for pushing him out into a lifestyle he wanted no part of. It is time that Kansas takes a stand and we realize that as law makers, and law enforcers, it is our responsibility to protect the citizens of this State. No longer can we succumb to organizations who think that the rights of a convicted sex offender's should be equal to a Pittsburg State College student's . . . right to live.

Across this great nation, State Governments are taking the necessary steps to stop this epidemic . . .

The California State Department of Justice implemented the Serious Habitual Offender Program in ten San Francisco Bay Counties. It was a program that coordinated the communication between criminal justice agencies in the identification, investigation, apprehension and prosecution for habitual sex offenders. That was later expanded to state wide and signed into law. (1989 – October 2nd, 1992.)

The State of Oregon passed child sexual abuse legislation that required any employee in a child service occupation to first have a Federal background check. (1991)

Minnesota past [sic] a law requiring state registration of felons who have committed sexual crimes against children. (1991)

And in Washington State, a sexual predator act has been upheld as constitution, [sic] including civil commitment. A law designed to protect the innocent from repeat offenders.

With that in mind, let me refer to the statement made by Walter Fisher on national television after admitting to sexually assaulting between two and three thousand children over a period of ten years . . .

"I will always have that urge".

Affecting only the violent sexual offenders, this new law is a [sic] opportunity to promote the safety of all Kansans. It will provide the legal system with the ability to control individuals inflicted with this unexplainable sickness, while reducing the populations exposure to repeated sex offenders.

Ladies and gentlemen we can join together with other states in taking this stand. We can make progress in a time when some feel there is little hope . . . because of all the drugs, . . . gangs, . . . hate, . . . and violence.

No longer should Kansans be force [sic] to live in fear . . .

We can show the people of this great State that we have the courage to put an end to this sinceless [sic] violence . . .

Courage is not the absence of fear . . . but the ability to carry on with confidence in spite of it.

Ladies and gentlemen, I have confidence in you.

THE SENATE JUDICIARY COMMITTEE

TESTIMONY BY JIM BLAUFUSS FOR SENATE BILL 525
(The Sexual Predator Act)

The most effective way to protect women and children from sex offenders is to send them to prison for the rest of their life. At this time a life sentence without parole is not possible.

This Sexual Predator Bill is a reasonable solution that can be used to stop rapists and pedophiles from destroying the lives of women and children. I do not believe anyone is willing to sacrifice a loved one in the hope that a sex offender should have another chance to start a new life.

These are sex felons who have already destroyed the lives of their victims. Sex offenders are a unique group of criminals who prey on women and children. There is no known treatment that will change the behavior of these violent felons.

Pedophiles and rapists can only be stopped by the State of Kansas. These people can not be stopped by their victims, they can not be stopped by their own families and they can not stop themselves.

Most sexual assaults have no witnesses and there is little or no evidence that can be used to get a conviction. How does a person prove rape? Some people tell women to not fight. Submitting to the attack might help their chances of living. In a trial, the jury wants to see photos of a badly bruised body or a dead body. If Stephanie Schmidt, killed in July by Donald Gideon, had lived, how would she have been able to prove that she had been raped?

Most victims do not report a rape. They do not dial 911. We are talking about a crime so heinous that the victims do not want anyone to know it happened and sometimes would rather be dead than live with the memory of the attack. During the sentencing hearing for Gideon, his attorney said the State of Kansas does not consider rape and sodomy, as doing great bodily harm. The harm done to a victims mind and soul by a rape is far greater than any physical harm.

The Schmidt Task Force, formed by Stephanie's parents, Gene and Peggy Schmidt, found there are many sex offender treatment programs. This task force did not find a single treatment program that is effective. The fact that the State wants to spend money on these programs sends a false message that somehow there is a solution that the citizens of this state can feel secure.

We teach our children to not trust strangers. Most assaults are by men known by their victims. Most sex offenders repeat their crimes until they are caught. The only way to stop them, is to lock them up and keep them from the people they will hurt. The rapes and murders involving sexual assaults that we see on the news daily are usually committed by men with a sex felony record.

Statistics show there will be 50 sexual assaults for every conviction. The cost of letting these people go free is much greater than locking them in prison. We were told the reason this bill did not pass two years ago was money. This bill could save money and lives. Repeat offenders go through our court system over and over at a great cost to taxpayers. Many times the taxpayers are

paying for the prosecution and the public defender, such as the case of Donald Gideon.

Because there is no effective treatment for sex offenders, this Bill may mean a life sentence for a felon that is considered a risk to women and children. SO BE IT! This Bill may cause some hardship for the convicted sex felon, but we know their many victims will live with the effects of the attack the rest of their lives.

The most common statement we have heard from rape victims is: "I wish I could be the person I was before this happened to me".

The Schmidts and I have had many visits with members of the current Parole Board. They all agree that everything possible should be done to keep these people off our streets. We know it is not possible to keep all sex offenders locked in prison, but this Bill will go a long way toward making Kansas a safer place for women and children.

Jim Blaufuss
Member of the Schmidt Task Force

/s/ Jim Blaufuss

7919 Westgate Ct.
Lenexa, Kansas 66215

913-492-6801

[LOGO] KANSAS AMI
KANSAS ALLIANCE FOR THE MENTALLY ILL
112 S.W. 6th, Ste. 305 • P.O. Box 675
Topeka, Kansas 66601
913-233-0755

Testimony on SB525
February 23, 1994

My name is Howard Snyder, and I live in Prairie Village. I am speaking today on behalf of the Kansas Alliance for the Mentally Ill, a state wide organization of families and friends of Kansans who suffer from mental illness.

It should be stated up frot [sic] we strongly support the "why" behind HB 525. It addresses a problem that must be solved. But we are in opposition, yes even in shock, at the "how". On page 4, line 27, it states that these very dangerous people are to be turned over to the custody of the secretary of SRS to be held in a secure facility. There is no definition of a "secure facility", so it is conceivable that a secure facility could be any one of the state psychiatric hospitals. This means that these people could be mixed in with our very vulnerable mentally ill family members. This is like putting the fox in the hen house.

I have a 34 year old son who suffers from Schizophrenia, which is a no-fault nonecureable brain disease. From time to time, for the rest of his life he may require hospitalization as his symptoms recur. As a poor person with a pre-existing lifetime disease, he is uninsurable in the private system, therefore, he will only have access to the state hospitals. I do not want (nor do you) my son raped by a dangerous sexual predator who has been placed in a state hospital because of SB525.

We already have in front of us the tragedy of the young staff member at Topeka State who was murdered by a dangerous person who had been placed in the general hospital population after the closing of the Awle unit two years ago. We in Kansas AMI stated publically it was not right to expose the ill people in Topeka State to those dangerous persons. We were told that everything would be alright, and now we all have to live with the consequences. Have you forgotten so soon? The bill should be revised to require that sex offenders be held in a facility away from all state hospitals, preferably by the Department of Correction [sic] which has the facilities and the expertise for holding long term high security inmates.

Another major concern of the families and friends of those Kansans who suffer from mental illness is financial. What is the cost? Where is the fiscal note? We understand that the cost has been estimated at $8 million for the first year, but we have seen nothing in writing.

We understand that the experience in other states has been that only a few sex offenders respond to treatment (the treatment technology in this area is primitive), and that those only responded after very long term very expensive treatment. Page 7, line 3 states that the secretary of SRS is responsible for *all* cost of evaluation and treatment of offenders in custody. Where does the money come from for this new responsibility?

Unless new funds are made available, the new responsibility can only be paid for from existing SRS or DOC funds. If paid from the SRS budget, then it will be paid for by a few – those whose SRS services are cut. If the general population is pushing SB525 then that's who

should pay for it. Any dilution of services to the mentally ill to pay for sex offenders is the equivalent of a selective tax on disabled Kansans who are already poor. What has my disabled son done to be saddled with the cost of providing care to a sexual predator?

In conclusion, consider this. The way SB525 is written, my son is put at risk of being the victim of a sexual predator while he is hospitalized, and having to pay for the predator to be there to prey on him.

Howard W. Snyder

[LOGO] **SOUTHWEST GUIDANCE CENTER**
333 West 15th, Box 2945 Liberal, KS 67905-2945
624-8171

Jim Karlan, Executive Director
Joe Bridenburg, President of the Board

Presentation by: James Karlan, RMLP, CMHA
Executive Director
Southwest Guidance Center
P.O. Box 2945
Liberal, Kansas 67905-2945
(316) 624-3171

Subject: S.B. 525:

My name is James Karlan. For 11 1/2 years, I have been the Executive Director of the Southwest Guidance Center (SWGC), a four county community mental health center located in Southwestern Kansas. For over 9 years, SWGC has operated a Sex Offender Treatment Program (SOTP).

There are currently fifteen offenders in the program. The duration of the program is five years.

I am here today to oppose the letter but not the spirit of S.B. 525. I believe that the goal of S.B. 525, as I understand it, is laudable: that is, the effective monitoring and treatment of sex offenders so that the citizens of Kansas can experience a high degree of safety and security within their respective communities.

In my opinion this well intentioned piece of legislation will not, in its current form, achieve the objective for which it is intended.

During the first year of SOTP at the Center, Center Staff were accused by some people in our community of being "bleeding hearts." Rather than being "soft" on sex offenders, I have found it rather ironic that the staff of the Southwest Guidance Center have been harder on and more consistent in their treatment of sex offenders over the past nine years than most of the courts, county attorneys, parole officers, and community corrections personnel, with whom the Center has associated during the history of the Center's SOTP. I have experienced within many of the systems that deal with sex offenders a sense of powerlessness, confusion, and even cynicism which has led many individuals to take a politically correct stance about sex offenders verbally while effectively feeling impotent about positively addressing the issue. This piece of legislation, in its present form, will, in my opinion, give the illusion of addressing the issue while actually allowing the overall system to continue doing "business as usual" with a few financially costly cosmetic changes.

Even more important than the potential diversion of millions of dollars from the development of services in the community for the mentally ill to the warehousing of sex offenders within the mental health system in inpatient hospitals is my firm conviction that this legislation will not make the communities of the State of Kansas appreciably safer.

I would now like to address two major points of concern which I have with regard to S.B. 525:

First, in Section 3 of the proposed legislation, the defined role of the county attorney of the county in which the sex offender has been convicted is permissive and unrealistic. I am concerned that most county attorneys would not involve themselves in such a process unless there were a public outcry because of a particularly heinous crime which has been earlier perpetrated by the particular sex offender in question. The cost in time and money that it would take to file a petition for evaluation and to carry out the subsequent trial to determine if the former offender were still a sexually violent perpetrator would cause most county attorneys to quietly ignore the issue unless forced by local circumstances to do otherwise.

On the other, if Section 3 were enforced and a person about to come out of prison were tried and found to be a sexually violent predator (under the Section 2 definition), that person would be placed in a state inpatient psychiatric hospital under the care of the Department of Social and Rehabilitation Services (SRS). The offender would remain there until . . . "the secretary of the department of social and rehabilitation services determines that the person's mental abnormality or personality disorder has so

changed that the person is not likely to commit predatory acts of sexual violence if released."

Recognizing the potential for a lawsuit should such an offender be released from a mental health inpatient facility and then perpetrate a sexual crime on another victim, no psychiatrist working in a state inpatient hospital will certify that someone in his or her care has essentially been "cured" of being a sexually violent predator as defined in Section 2 and recommend the offender's release into the community. As a result, state inpatient mental health facilities will begin to warehouse offenders. This will lead to at least three negative outcomes: First, the financial cost to the citizens of Kansas to warehouse these individuals will skyrocket. Second, no effective treatment will be available in the community for those less violent sex offenders who could have been treated there instead of being incarcerated; and third, state psychiatric hospitals will essentially be turned into prisons, to the detriment of the mentally ill patients within the facilities who are not sexually violent predators.

It is my opinion that Section 3 should be amended so that inpatient treatment of sexually violent predators remains within the Department of Corrections. In addition to clinical and financial considerations, there is the issue of *defacto* decriminalization of a sex offender's crimes once the offender is made the responsibility of the mental health system.

The second issue which I would like to raise today regards S.B. 525's definition of a "sexually violent offense" as contained in Section 2. I will also suggest an

alternative to incarceration for first time offenders of certain sexual crimes.

The definition of "sexually violent offense" contained in S.B. 525 does not recognize that there are subpopulations of sex offenders. The crime of rape, an obvious act of violence, is equated with incest. Pedophilia, a crime in which individuals prey on children and have children as their main object of sexual desire, is also equated with incest and other sexual crimes.

In my opinion, rapists and pedophiles should not be treated initially in the community but in a correctional facility. As part of their parole, they should be required to participate in an appropriate community based sex offender program for five years. Should they be violated from the community program, they should immediately be re-incarcerated in a correctional facility.

As for other felony sex offenders, including incest offenders, the issue should be to determine which of these felony sex offenders are treatable in the community and which are not. I offer the following as possible criteria for making such a determination:

1.) The sex offender must not have used physical violence or the threat of physical violence in the commission of his/her crime.

2.) The sex offender must demonstrate the he/she is sincerely motivated for treatment by admitting the offense and pleading guilty. Pleading "not guilty" or "no contest" and then requesting admittance to an outpatient program once one is found guilty is an indicator of low

motivation and leaves a very poor prognosis for successful outpatient treatment.

3.) The sex offender must never have been incarcerated in a correctional facility prior to his/her arrest as a sex offender. Prior incarceration makes successful treatment of the individual in the community problematical.

4.) During the pre-sentence investigation, the sex offender must undergo a thorough psychological evaluation following his conviction as a felon. At this time the courts would be informed whether the sex offender is considered treatable in the community.

5.) The sex offender must then enter a community program of five years duration. The offender will be sentenced to the program with the understanding that, should he/she be violated out of the program by program staff, he/she will be immediately incarcerated in a correctional facility.

6.) The sex offender will pay for his/her treatment. This is not just a financial issues [sic]. It is a well-established fact at our Center that a lack of willingness to pay for such treatment indicates the offender's lack of commitment or even open resistance to invest himself/herself in "working the program."

In closing, I would like to reiterate my support for an appropriate, effective piece of legislation regarding the treatment of all sex offenders, be they violent at the present time or not.

If the citizens of Kansas are truly serious about addressing this issue, they will empower their governmental officials to develop both inpatient and outpatient services

for sex offenders. Those who are truly dangerous should be kept in a correctional facility and receive treatment there for as long as is necessary. First-time sex offenders other than rapists and pedophiles who are evaluated after being convicted and are found to be treatable on an outpatient basis under strict program conditions should be treated a minimum of five years, with the understanding that they will be incarcerated in a correctional facility should they not work the program.

Now for the part that no one likes to talk about: money. The political will of the people and their elected governmental officials on this issue will be measured by the extent to which they are willing to fund the creation and maintenance of quality inpatient and outpatient services for sex offenders. Last year the treatment of approximately 15 sex offenders at our Center cost $89,000. Revenues totaled just over $15,000. In one year, the Center experienced a deficit of $74,000 in this one program alone. Even though the Center is dedicated to providing SOTP as a community service, we will not be able to continue SOTP for very long without additional financial support.

I thank you, ladies and gentlemen, for allowing me to give testimony today. I will be happy at this time to answer any questions you have.

TESTIMONY
FOR
SENATE BILL 525

by
Walter Thiessen, LSCSW
C.M.H.C. Director
Prairie View, Inc.
Newton, Kansas 67114

TESTIMONY FOR SENATE BILL 525

As the director of the Community Mental Health Division of Prairie View Inc., in Newton, Kansas, I applaud your efforts in trying to deal with this very difficult issue of sex offenders. As a representative from a provider of mental health services to sex offenders in the community, I support the testimony that has been provided by the Association of Community Mental Health Centers in opposition to the passage of Senate Bill 525. We at Prairie View have had an intensive outpatient sex offender treatment program for almost ten years. Several of our staff have had extensive training in this area and we are concerned about what we see happening in our society. We are as concerned as you are for the safety in our communities. We believe, however, that this bill does not go far enough in dealing with the larger problems related to sex offenders. This bill, in some ways, just deals with the tip of the iceberg.

Staff at Prairie View have been working with other outpatient providers in the area to look at the whole issue of treatment of sex offenders. We have identified many problems that I believe you the legislature could help address. Our society is needing to spend more and more resources in dealing with this problem, not only in the incarceration of the offender, but also in the treatment of the victims of these offenses. It is our belief that a more comprehensive approach needs to be developed by the State to respond to this crisis.

THIS APPROACH SHOULD ADDRESS THE FOLLOWING:

1) Prevention and education.

2) A systematic process by which persons who have sexually offended are evaluated, tested, and screened for appropriate treatment settings.

3) A comprehensive and coordinated array of treatment options be available across the State for this population, both outside and inside prisons.

4) A set of criteria and protocol be established that providers would need to meet in order to assure competency and quality in the treatment programs.

5) A clear understanding of responsibilities between the Department of Corrections and treatment providers to assure the safety of the community.

6) For persons who are evaluated and found to be "a sexually violent predator", that they

be maintained in a secure setting that has been developed as part of the comprehensive plan.

Research indicates that most offenders where also victims of sexual crimes. If we, as a society, are unable to address this issue in a comprehensive manner, we will continue to create more victims and increase the number of offenders. My recommendation is that the Department of Corrections work together with treatment providers across the State to develop a comprehensive plan in dealing with sex offenders. It is only in this way, that we will begin to deal with this growing problem in our society. We at Prairie View, along with other community mental health centers, would be very interested in working with the Department of Corrections in developing such a plan.

Thank you for your time and your commitment to dealing with this very difficult issue.

/s/ Walter Thiessen LSCSW
Walter Thiessen, Director
Community Mental Health Center

State Of Kansas
Tenth Judicial District

Office Of District Attorney

Paul J. Morrison
District Attorney

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COMMENTS TO THE SENATE JUDICIARY COMMITTEE
Re: Senate Bill No. 525

I welcome the opportunity to speak with you this morning about a piece of legislation you are considering, the Sexually Violent Predator Act, that will place the State of Kansas on the cutting edge in terms of dealing with offenders whose behavior has devastating and far-reaching effects. It is estimated that 1 in 3 girls and 1 in 10 boys will be sexually victimized by age 18, and that 1 in 4 woman [sic] will be sexually assaulted in their lifetime. According to the Governor's Task Force on Community Protection, the immediate monetary impact of responding to a single case of child sexual abuse is estimated to be about $183,00, [sic] including medical and psychological care for the victim, the investigative and court expenses and the cost of incarceration, supervision or rehabilitation of the offender (Prentky and Burgess, 1989). As illustrated, the serious cost of interpersonal violence is enormous. And those cost [sic] reflect cases in which victims survive.

When considering the passage of this bill, it may be helpful to look at the numbers of inmates this act would effect. As of August, 1993, the Kansas Department of Corrections had a total inmate population of 6,259. Of

that total, 1,091 of those inmates were serving controlling [sic] a minimum sentence for a sex offense. During fiscal year 1989, 138 sex offenders were released on parole or conditional release. One might extrapolate that in a three year period, there could be a total of approximately 450 inmates who would be released and considered under this act. Now, let's compare that number with the number reviewed in Washington since the inception of their Sexually Violent Predator Act. Since their law was enacted in July of 1990, approximately 2,000 inmates have been referred for screening. Of that total, 17 met the definition of a sexually violent predator and have been placed in a secure treatment facility, 6 are awaiting trial for determination as to their status as a predator, and 6 are currently undergoing evaluation. It is apparent when examining the numbers that Washington have reviewed and mandated treatment for that the numbers of persons who will be swept up in the net created by this law will be very small.

What kinds of offenders will, indeed, be caught up in this net? Although the numbers may be small, the damage done by these few individuals is tremendous. Consider Alvin Gaines, an offender that was convicted of kidnapping, raping, and sodomizing a 14 year old girl who was walking through her neighborhood late at night. A burglar by trade, Gaines was also an opportunist who is suspected of committing several other sexual assaults in communities throughout Johnson County. Consider, too, Robert Philippi. Convicted twice in Missouri for kidnapping and sex crimes, he was recently sentenced in Johnson County for kidnapping and aggravated robbery, a set of circumstances in which he again preyed on a woman

as his victim. Currently being prosecuted in my jurisdiction is another predator who, having been convicted of prior sex offenses against two other woman [sic] who he selected at random, has been charged with attempted rape, attempted aggravated criminal sodomy, and kidnapping. And finally consider Kenneth Hay. He is currently serving time in a Kansas State Correctional facility for luring small girls to his automobile and masturbating in front of them.

What do all of these offenders have in common? Without a doubt, it is safe to say that, although some of them have prior criminal history which can be verified, we have no way of knowing how many people each predator has victimized. In a study conducted by Gene Abel and staff at the New York State Psychiatric Institute's Sexual behavior Clinic, they found that the number of sex offenses reported were significantly higher that [sic] the numbers reported to officials or in official statistics. In this study, the sample of 411 paraphiliacs (a term which refers to sex offenders who have compulsive thoughts and urges to carry out sexually aggressive behaviors) attempted 238,711 sex crimes and completed 218,900 of them. This included nuisance and other low-level types of sex offenses. On the average, each offender attempted 581 crimes. As an example, although we were able to identify 8 girls who were old enough to testify in the Hay case, how many other children may have been victimized and the act went unreported.

The offenders we are referring to are a small but highly dangerous population of sex offenders who will reoffend when released back out into the community. Just as an alcoholic is never "cured", but must continue to fight the

battle of his/her addiction, so, too, is it for the sexually violent predator. Where, in our communities, can these persons be placed that they will not have access to woman [sic] and children? If you isolate these individuals in a treatment facility that will address their needs you are also addressing the needs of each of our communities, by ensuring that they will be safe from individuals who will victimize again. To wait until the offenses have stacked up against an individual to the point that they will be incarcerated until they are old is to allow the numbers of victims, the amount of destruction to stack up as well. That cost is simply too great.

Lynn Stemm
Victim Assistance Coordinator

[LOGO]

WASHBURN UNIVERSITY

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February 19, 1994

Senator Robert Vancrum
Statehouse
Topeka, KS

Re: SB 525

Dear Senator Vancrum:

I have received, through Gordon Self, your request that I review SB 525 and am pleased to do so. I understand the bill is scheduled to be heard on Tuesday and

Wednesday of this week at 10:00 AM. It would be very difficult for me to appear at either of those times, although I would certainly attempt to arrange it if it seemed absolutely necessary. Since my comments contained herein are more in the nature of technical review than advocacy either way, I suspect they should suffice (and thus save your time in the hearings, too!). I will add, however, as I said at hearings on SB 18 two years ago, that I see nothing generally inappropriate in this legislation, and feel it is well within the legislature's constitutional authority from both a substantive and procedural examination. Since the hearings on SB 18, as you know, the Washington Supreme Court has upheld that state's sexual predator law against both substantive and procedural constitutional challenges. *In re Young*, 857 P.2d 989, is a well reasoned and thorough opinion and provides strong support for the proposed Kansas legislation, which is identical in most respects to the Washington law.

COMMENTARY:

1. In Section 1, at lines 30 through 38, reference is made to the inappropriateness of the Kansas treatment act in application to sexually violent predators, since such persons would not have the opportunity to "engage in an overt act during confinement as required by the treatment act for mentally ill persons. . . . ". This language comes from the Washington act. Our treatment act, however, unlike Washington's, has not been interpreted to require a recent overt act to support a finding of liklihood [sic] of harm. See *In re Treatment of Albright*, 17 KA2d 135 (1992). The sentence beginning on line 30 and concluding on line 38 should be deleted, since it doesn't provide a

legally valid reason for the legislation. In my opinion the legislative finding of necessity in section 1 is sufficient without it.

2. Section 3 requires the agency with jurisdiction to give three months notice prior to the anticipated release of a person who may meet the criteria of a sexually violent predator to the prosecuting attorney of the county in which that person was originally charged. Except in the case of a person serving a sentence on conviction, however, the agency with jurisdiction probably would not know that far in advance. An alternative would be to provide that the agency give immediate notice at any time that the agency has knowledge of a scheduled event which could result in the release of the person within three months. An "event", of course, could be a scheduled release date or, in the case of an incompetent or insanity acquittee, a scheduled hearing.

3. Section 4 is clear enough when applied to a situation arising out of a release as described in section 3. It appears that a petition could be filed with respect to a person already in the community, however. . . . someone, in fact, who may have been released some time ago. In the normal course of events, probably that person is most likely to draw attention through some new criminal act, and thus this petition procedure would be unnecessary; the matter would be dealt with in the new criminal proceeding. It is possible to imagine, however, that in a few cases it may become apparent that a former offender who has been on the "straight and narrow" for some time appears to be demonstrating a pattern of behavior that foreshadows a return to the old misconduct. In such a case the person may not even be residing in the county

where the person was formerly convicted or charged, thus the language should probably include the prosecuting attorney of the county where the person presently resides as one who may file a petition under this section. Though I'm not convinced this process requires it, I would feel more comfortable from a procedural due process point of view if the petition were required to be accompanied either by a medical statement or an explanation why the obtaining of such a statement is not possible. The added burden and cost to the state is minimal, and the added protection to the individual considerable. This is the traditional test for procedural due process (*Matthews v. Aldridge,* 424 U.S. 319).

When we start reaching back into someone's former life, it gets uncomfortable, doesn't it . . . and the farther back we reach the greater the discomfort, particularly since we know the person has been branded once the petition is filed, no matter how the hearing comes out. Perhaps it would be sound legislative judgment to set a limit. The Washington Supreme Court in *Young* required a recent overt act to satisfy due process concerns in applying these provisions to persons in the community. Our courts might do the same, but not necessarily, since they interpreted a similar civil committment [sic] statute differently in that respect (see *Albright,* above). An argument can surely be made that a person cannot be clearly adjudged risk-free until they have been in the community for some time, since they have few if any opportunities to misbehave while in confinement. Thus a post release period of (perhaps 5?) years, after which a petition could not be filed based on the prior misconduct may strengthen the statute against constitutional attack.

4. Section 5 requires an evaluation by a person "deemed to be professionally qualified to conduct such an examination". Deemed by who? Washington's statute provides for qualification under rules established by thier [sic] equivalent of our SRS. Perhaps that goes further than necessary. Transferring the person to an appropriate facility for evaluation is probably as far as the statute needs to go.

5. Section 6 provides for trial of the issue within 45 days after the filing of the petition. The Washington statute is identical, and the Washington Supreme Court held that due process and equal protection considerations required notice and an opportunity to be heard within 72 hours after the individual is taken into custody. *In re Young,* supra. Under the Kansas Treatment Act, a person facing involuntary hospitalization is entitled to an *adversary* probable cause hearing not later than 5:00 PM on the second full day following the filing of an application for determination of a mentally ill person. K.S.A. 59-2912. Placing a similar requirement in section 5 of SB 525, following the initial *ex parte* determination of probable cause by the judge, would strengthen the statute in this regard. It could possibly be argued that the 45 day period before trial is too long, since the full hearing under the Kansas Treatment Act must come within 7-14 days following the filing of an application for determination. I believe the difference can be justified, however, if it can be shown that the longer period is reasonably necessary for the evaluation required. That, of course, is a question for medical expertise.

6. Section 6 provides for a jury trial upon demand, but does not establish the nature of the jury, or the

required vote. I would suggest the addition of the following sentences at the end of section 6: *Demand for jury trial shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 59-2917.* This would provide for a jury of six, as in civil committment.

7. Sections 8 and 10 contain the substance of the Washington statutes 71.09.070 and 71.09.090, but have been rearranged in a manner that, to me, makes them difficult to follow. In part this is so, I think, because in section 8 there seems to be an assumption that the annual review is a hearing, when in fact it is not *unless* a petition for discharge is filed, or a waiver of rights is not filed. I believe the statute will be much clearer if everything is stricken from section 8 following the word "act" on line 23 of page 5, and then section 10 is completely replaced by the language of section 71.09.090 of the Washington act, with the following changes:

a) The reference to secretary of the department of social and health services should be changed to our terminology – secretary of SRS;

b) The Washington statute sets 45 days as the time within which a hearing on a petition for release authorized by the secretary must be held, and sets no time frame for a hearing where no waiver of rights is filed with the annual report. Some statutory time frame is necessary, and 45 days seems longer than can be justified, since in this situation there should be no need for an evaluation since the individual is and has been in treatment for this condition. Under the Kansas Treatment Act, where a request for hearing is filed in connection with the

required semi-annual review, the hearing on whether the patient continues to be a mentally ill person must be held within 10 days. It would appear difficult to justify a longer delay under the current proposal.

Thank you for the opportunity to review SB 525. I hope my comments will be in some degree helpful.

Very truly yours,

/s/ Raymond L. Spring
Raymond L. Spring
Distinguished Professor

RLS/rs

AMERICAN CIVIL LIBERTIES UNION
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Testimony in Opposition to SB 525
Senate Judiciary Committee, Hon. Jerry Moran, Chair
Submitted Tuesday, February 22, 1994
by Carla Dugger, Associate Director

The American Civil Liberties Union of Kansas opposes SB 525 for the following reasons:

– The bill establishes a procedure for civil commitment for sexually violent offenders, and in so doing violates the entire fundamental constitutional protections of due process and proof of evidence required that is beyond a reasonable doubt.

– The American right to due process is dependent on proof of *past* conduct, not possible future conduct.

– Under this legislation, a jury would be asked, in effect, to lock up persons because they fear them. Please consider what outrages could be committed by such juries. Isn't it likely that any person of color will be feared by the average jury regardless of the "evidence?"

– Although the bill attempts to construct an illusion of due process by allowing trial by jury, et al., the basic premise of the bill is seriously flawed. It calls for jury determination of two very vague possibilities of future behavior – first, that the petitioner is not safe enough to be left at large, and second, if that person is discharged, they are likely to commit a sexually violent act.

– Civil commitment should be imposed only if there is imminent danger to the petitioner himself (or herself) and to others. Vague preditions [sic] of future possibilities are tantamount to soothsaying, and deserve no validity under the law.

– If a rapist is dangerous enough to deserve such lengthy incarceration, it would be more constitutional to ensure this through the criminal process itself, not through an additional civil commitment procedure.

Approved: 3/15/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 3:00 p.m. on February 24, 1994 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Ellen Piekalkiewiez, Association of Community Mutual Health Center
Terry Larson, Kansas Mental Health Coalition
Randy Proctor, Director Mental Health, Department of Social and Rehabilitation Services
Beverly L. Baker, County Clerk, Johnson County
Anne Smith, Kansas Association of Counties
Marjory Scheufler, Edwards County Commissioner and Member of the Advisory Committee on Juvenile Offender Programs
Julene L. Miller, Deputy Attorney General, State of Kansas
Dennis Jones, Kearny County Attorney, Southwest Kansas Juvenile Detention Facility Board of Advisors
Sue W. Lockett, Chairman of Advisory Committee on Juvenile Offender Programs
Linda Wood, Financial Analyst, Kansas Development Finance Authority

Carolyn Hill, Department of Social and Rehabilitation Services
T.C. Anderson, Kansas Society of Certified Public Accountants
Richard H. Mason, Kansas Trial Lawyers Association
Trudy Aron, American Institute of Architects
George Barbee, Kansas Consulting Engineers
Richard H. Mason, Kansas Trial Lawyers Association
Clifford Hacker, Sheriff of Lyon County
Lisa Moots, Kansas Sentencing Commission
Jim Coder, Kansas State Fire Marshal Department
W. Kent Harris, Fire Marshal, City of Olathe

Others attending: See attached list

SB 666 – fraudulent representation on employment application

SB 667 – inmates sentenced to custody of secretary

SB 525 – sexually violent offense

Randy Proctor, Director of Mental Health, Department of Social and Rehabilitation Services testified as an opponent to *SB 525 (Attachment No. 1).*

Ellen Piekalkiewiez, Association of Community Mutual Health Center provided written testimony in opposition to *SB 525 (Attachment No. 2).*

Terry Larson, Kansas Alliance for the Mentally Ill testified in opposition to *SB 525* and provided written testimony *(Attachment No. 3).*

SB 753 – public official or agency who discloses information protected from criminal liability under certain circumstances

TESTIMONY ON S.B. 525

PRESENTED TO:

1994 SENATE JUDICIARY COMMITTEE

PRESENTED BY:

RANDY PROCTOR, DIRECTOR
SRS MENTAL HEALTH SERVICES

ON BEHALF OF:

DONNA L. WHITEMAN, SECRETARY
SOCIAL AND REHABILITATION SERVICES

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of fullcitizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

Testimony on S.B. 525
Presented to the Senate Judiciary Committee
February 23, 1994

SRS/MHRS supports efforts to protect public safety. Kansans have a legitimate concern for safety and protection from violent sexual predatory acts. In many instances these are heinous crimes which demand severe sanctions. We hope the committee will consider a joint effort between Department of Corrections and Social and Rehabilitation Services to address this problem. This approach seems consistent with a similar law in Washington.

If civil commitment procedures are changed to accommodate the long-term care and treatment for persons determined to be sexually violent predators in a secure facility, we would recommend consideration of language similar to Washington state's law. The Washington law states: "The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population." In Washington the Sexual Predator Program is administered and operated by the Department of Social and Health Services and is located within the Department of Corrections institutions complex. The DOC in Washington provides meals, clothing, laundry services, medical and dental services, and barber services in addition to the perimeter security.

Section 1 of S.B. 525 suggests legislative intent to very narrowly apply civil commitment procedures for the long-term care and treatment for persons determined to be sexually violent predators to those deemed to be the most dangerous. However, if the procedures outlined in S.B. 525 are more liberally implemented, the fiscal note for providing treatment and care in a secure facility could dramatically escalate in future years.

Assuming the responsibility of a new population may increase the possibility of diverting resources from the established targeted populations of adults with severe and persistent mental illness and children/adolescents with severe emotional disturbance. If this bill is enacted, SRS/MHRS recommends separate funding streams and budgets specifically targeted to this initiative.

[LOGO]
Association of Community
Mental Health Centers of Kansas, Inc.
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Phone (913) 234-4773 • Fax (913) 234-3189

Testimony on S.B. 525
Presented to the Senate Judiciary Committee
February 23, 1994

The Association of Community Mental Health Centers opposes the passage of S.B. 525 in its current form, for the following reasons:

1. **S.B. 525 inappropriately decriminalizes sexual offenses, by the use of civil commitment. Civil commitment should only be used to commit individuals who are determined to be dangerous to themselves or others because of their mental illness, but who do not possess criminal intentions or malice of forethought.**

2. **The bill, in its current form, does not guarantee that sexual predators will be housed separately from individuals, including children, with mental illness. The safety of these most vulnerable people is not adequately assured in S.B. 525.**

3. **By including sexual predators under the diagnosis of mental illness, the bill further stigmatizes the mentally ill in our society.**

4. **The bill does nothing to truly correct the current system of sentencing and treating sexual offenders. Sexual offenders must have state-of-the-art sex offender programs while they are in prison and intensive aftercare programs once they are released in order to protect society.**

5. The cost of treating sexual predators in the Department of Social and Rehabilitation Services (SRS) institutions could syphon limited resources from the truly needy. We question why the Legislature would reverse its visionary plan to reform the mental health system by "back filling" SRS institutions with dangerous sexual predators?

INTRODUCTION

Especially problematic to the mental health community about S.B. 525 is the provision which mandates that violent sexual predators be civilly committed to SRS institutions after they have served their sentences in the criminal justice system. We do not disagree that society must be protected from violent sexual offenders who are without a doubt unmanageable and dangerous people. Our position is that if an individual has committed a serious and especially violent sexual crime, they should be incarcerated for life with no possibility of parole like any other exceptionally dangerous individual. If there is a concern about safety when certain individuals are released from prison and are at large in the community, the criminal justice system should provide close supervision and intensive aftercare programs.

SAFETY OF THE MENTALLY ILL IN STATE HOSPITALS

The bill mandates that once a sexual offender is classified as a sexually violent predator they are remanded to SRS custody, to be housed in a secure facility, which is not defined in the bill. We do not believe that the bill, in its

present form, provides enough protection to patients with mental illness currently receiving treatment in the state hospitals. The Washington law, though quite similar to S.B. 525, provides greater protection for the truly mentally ill in state hospitals. The Washington law states that the facility for sexual offenders should not be located on the grounds of any state mental facility because these institutions are not sufficiently secure for violent sexual predators. We request that S.B. 525 be amended to include a provision that the facility to house sexual predators shall not be located at a state hospital but at a Department of Corrections (DOC) institution.

THE NEED TO REDESIGN CURRENT TREATMENT AND SENTENCING OF SEXUAL OFFENDERS

The current system of sentencing and treating violent sexual predators is broken. The criminal justice system currently does not accommodate the very special treatment and sentencing needs of sexual offenders. We would be very supportive of flexible sentencing guidelines which could sentence violent sexual predators for life with provisions for release if they undergo successful treatment.

The Community Mental Health Centers are ready to play a role in assisting DOC in developing more sophisticated treatment programs behind the walls for sexual offenders. Several of our centers have already been contacted to serve on a task force to redesign the DOC sexual offender program. We urge that the Legislature encourage DOC to look to models that have been developed in other states as well as Canada in redesigning the prison

sexual offender program. The treatment program must be introduced long before the expiration of the offender's active sentence. The Legislature, if truly committed, to making a difference, must fund state-of-the-art sex offender programs.

In addition, sexual offenders (in fact all offenders) who are released from prison must have aftercare programs (relapse prevention in the case of sex offenders) which should be closely monitored and enforced by DOC. There appears to be consensus that the treatment of the sex offender is never complete. Following a state-of-the-art intensive treatment program in prison, participants must continue in aftercare counseling. Payment for such aftercare should come from the offender themselves, but if they are unable to pay, DOC should be required to pay for the aftercare to ensure that the individual is receiving it.

In 1993, there were 330 individuals granted probation who had committed rape, indecent liberties with a minor, aggravated sodomy, enticement of a child, sexual battery, aggravated sexual battery, among other crimes. Based on what the Community Mental Health Centers have observed and experienced first-hand, these individuals are not receiving adequate, consistent, and monitored aftercare. It is no wonder that they re-offend. The system is broken! Let us not try to repair it with another quick fix that simply gives society the illusion that the problem of sexual offenders is solved. We should not act emotionally but in a rational and sensible way: first, redesign the sex offender program currently in force and second, introduce a comprehensive aftercare treatment program. If S.B. 525 is implemented in a similar fashion as it is in

Washington, only 30 of the 300 sexual offenders will be civilly committed every year and that will leave 300 offenders free to terrorize communities.

Sex offenders should not be treated as one heterogeneous group. It is crucial that a presentencing assessment and evaluation take place to determine both the place for and type of treatment that will be selected for a sex offender. For example, a first-time incest offender whose offense did not include acts of violence or serious threats of violence, most likely can be better treated on an outpatient basis. However, that individual must actually be sentenced to the outpatient program with the threat of incarceration in a maximum correctional facility should he not fully comply with the outpatient program guidelines. Assessments and evaluations may find that other individuals who are repeat offenders could be treated initially in an inpatient program and then slowly worked into an outpatient setting.

FISCAL IMPACT OF S.B. 525

The current provisions of S.B. 525 have the potential to strain the mental health system of which we are a partner to the state, as part of the Mental Health Reform Act of 1990, the intent of which was to downsize the state hospitals. S.B. 525 would simply be a backdoor method to achieve life of incarceration for the sexual predator, which we do not oppose. We do, however, strongly oppose the use of the mental health system as a dumping ground for these individuals either at the state hospitals or at the community level.

CONCLUSION

S.B. 525 improperly decriminalizes by, civil commitment, crimes, which are most criminal and heinous in nature. The crimes committed by violent sexual predators demand severe sanctions, best administered by the criminal justice system. We urge the Committee to consider redesigning the current sex offender programs (both in prison and after) and introduce stricter penalties; only in this way will the intended results of S.B. 525 of protecting society be realized.

(LOGO) KANSAS AMI
KANSAS ALLIANCE FOR THE MENTALLY ILL

112 S.W. 6th • P.O. Box 675
Topeka, Kansas 66601
913-233-0755 • FAX 913-233-4804

Testimony

February 23, 1994

To: Senate Judiciary Committee

From: Terry Larson, Executive Director,
Kansas Alliance for the Mentally Ill &
Chair, Kansas Mental Health Coalition

RE: SB 525

No one can disagree that persons who commit sexually violent offenses ought to be removed from society. If commitment and treatment can be accomplished according to what appears to be the bill's intent, it would be difficult to oppose as long as sex offenders are *totally* segregated from the general psychiatric population.

However, with no funding earmarked to implement SB 525's provisions, we must oppose the bill. Further, the Governor's budget significantly cuts funding designated specifically for persons with severe and persistent mental illnesses. This includes a $730,000 cut to Mental Health Reform per the 1990 promise, a $577,000 cut from community mental health center base funding, removal of $200,000 from vocational programs (which would generate over $750,000 in federal funds), a lack of any increase to consumer-run programs and the frightening possibility of major cuts in Medicaid. These cuts by themselves will

dramatically cut needed community-based services to the population with disabling mental illnesses.

Compound the cuts by adding sexually violent persons who will receive priority treatment because they would be court ordered, into an already underfunded mental health system, creates further victimization of a number of persons who, through no fault of their own, are very ill.

If passage of SB 525 is the will of this legislature, we ask that you:

1. Guarantee separate housing for the populations.
2. Support reinstatement of all mental health cuts as reflected in the Governor's budget.
3. Fully fund implementation of this act in addition to reinstatement of the cuts.

Thank you.

Approved: 3/22/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 25, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Senator Tiahrt
Phil Journey
Diana L. Conner
Michael Ballard
Magistrate John Wooley, Wichita
Michael Daly
Gregory Gragg
Jim Clark, Kansas Counties and District Attorneys Association
Loren Younger, Kansas Sheriff's Association
Ron Olin, Kansas Chief's Association
Terry Maple, Kansas Highway Patrol
Paul Shelby, Assistant Judicial Administrator

Others attending: See attached list

SB 525 – sexually violent offense

Senator Vancrum gave a brief overview of *SB 525* to include the balloon *(Attachment No. 1)* and answered questions from the Committee.

A motion was made by Senator Vancrum, seconded by Senator Bond to amend SB 525 by adopting the balloon and by making conceptual technical amendments. The motion carried.

A motion was made by Senator Vancrum, seconded by Senator Harris to report SB 525 favorably as amended.

A substitute motion was made by Senator Petty, seconded by Senator Martin to report SB 525 favorably with an additional amendment to be subject to appropriations. Motion failed.

The Committee returned to the original motion by Senator Vancrum, seconded by Senator Harris to report SB 525 favorably as amended. The motion carried.

SB 666 – fraudulent representation on employment application

SB 667 – inmates sentenced to custody of secretary

Senator Vancrum reported there would be a substantial fiscal not for *SB 666*. He stated the Department of Corrections felt *SB 667* might result in under utilization of work release programs.

No action was taken on *SB 666* or *SB 667*.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:00 p.m. on March 21, 1994 in Room 313-S of the Capitol.

All members were present except:

Representative Tom Bradley – Excused
Representative Candy Ruff – Excused
Representative Elaine Wells – Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Others attending: See attached list

SB 525 – Civil commitment of persons who commit sexually violent offenses, *(see attachments 1-15)*

Chairman O'Neal explained that the sub-committee approved an amendment that would require a separate building to be segregated from the other mentally ill or developmentally disable population, *(see attachment 16).*

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Substitute SB 608 – Sentencing for persons who commit any felony for a criminal street gang, *(see attachments 17-20).*

The Chairman explained that this bill would increase the penalty for street gangs. The sub-committee recommended adding language that the courts could take into consideration that the defendant committed a felony violation for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members. Also included is the definition of what a criminal street gang would be comprised of, *(see attachment 21).*

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Mays seconded the motion. The motion carried.

SB 607 – Increasing the penalties for stalking, *(see attachment 22).*

The Chairman commented that the sub-committee reworked the definition of stalking to read that stalking is an intentional and malicious following or course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose. Also the severity levels were changed and the definition of harassment was stricken because it included the term harass in the definition, *(see attachment 23).*

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

SB 656 – Battery against a youth center employee, *(see attachment 24).*

Chairman O'Neal explained that the sub-committee recommended that the bill be passed favorably. The Senate had added juvenile detention employees and the sub-committee felt that this was appropriate.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

SB 670 – Crimes and punishment related to arson and aggravated arson, *(see attachment 25).*

The Chairman commented that the sub-committee recommended that no action be taken on the bill.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Robinett seconded the motion. The motion carried.

State Of Kansas

[SEAL]

Topeka

Senate Chamber
State Capitol
Topeka, Kansas 66612-1504
(913) 296-7361

Bob Vancrum
Senator, Eleventh District
Overland Park, Leawood.
Stanley Stilwell, In
Johnson County
9004 W. 104th Street
Overland Park, Kansas 66212
(913) 341-2609

Committee Assignments
Vice-Chairman: Energy
And
Natural Resources
Member:
Ways And Means
Judiciary
Member:
Commerce, Labor
And
Regulations Committee,
National Conference On
State Legislatures
Member: Environmental
Task Force, Council On
State Governments

IN RESPONSE TO THE TESTIMONY FROM THE ASSOCIATION OF COMMUNITY MENTAL HEALTH CENTERS OF KANSAS:

1. SB 525 does *not* decriminalize sexual offenses, as the Association claims. It provides for civil commitment of sexually violent predators who, under the statute, *already* are serving criminal sentences for their acts.

The Association rightly says that civil commitment should be used only to commit individual [sic] determined to be dangerous to themselves or others because of their mental illness. The state of Washington,

for example, has sought to classify only 3% of its 1500 sex offenders as sexually violent predators. There seems little doubt that this narrow class of the most dangerous sexual offenders presents a danger to others once they have served their time. This being the case, civil commitment and treatment of these individuals is altogether appropriate.

2. The Association's safety concerns are legitimate and protection of those currently in state mental hospitals will be addressed, with the cooperation of SRS, if the bill becomes law.

3. The bill seeks to place no stigma on those with mental illness. Rather, its goal is the treatment of sexually violent predators and the protection of the community. Those found to be sexually violent predators are, by definition, individuals with mental abnormalities or personality disorders and as such, *need* treatment for mental illness. Indeed, evidence shows that the prognosis for rehabilitating sexually violent offenders in a prison setting is poor.

4. As the association recognized, the treatment of sexually violent offenders will cost money. But SB 525 is not an attempt to "syphon" resources from SRS, nor is it an attempt to use the mental health system as a "dumping ground", for sexually violent predators.

As the Washington state experience shows, this bill targets a very *small* group of only the most violent offenders. Washington has filed cases under its law in only 28 cases in more than 3 years.

5. Finally, the association claims the bill does not completely solve the problems of treatment and sentencing of

sexual offenders. Admittedly, SB 525 is no cure-all. It is but one step – but an important one nonetheless – in a larger effort. The state has neither the financial resources nor the facilities to impose criminal sentences of life imprisonment on sexual offenders, as the association suggests. Practical reasons aside, criminal life sentences present constitutional questions that no doubt would result in years of litigation and more tragedies for families like the Schmidts. The practical reality is that sex offenders eventually return to the community. This bill, which is civil and not criminal in nature, aims to protect the community from the most dangerous sexually violent predators.

[LOGO]

JOAN FINNEY, GOVERNOR OF THE
STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

March 1, 1994

The Honorable Robert Vancrum
Statehouse – Room 449-N
Topeka, KS 66612

Dear Senator Ranson:

Senate Bill 525 establishes civil commitment procedures for the long-term care and treatment for persons determined to be sexually violent predators.

Section 1 of SB 525 suggests legislative intent to very narrowly apply these procedures to only those sexually violent offenders deemed to be the most dangerous. This section also states the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons.

Given these assumptions, we should anticipate an initial need for a secure facility with the capacity of roughly one hospital ward (20-30 beds) if SB 525 were enacted. However, since the prognosis for cure is poor and treatment needs are very long term, future planning should accommodate the probability of increasing demand for secure beds. Although estimates are difficult to establish at this time, it is not unrealistic to anticipate the need for an additional secure ward every two to three years.

Finally, since the target group of SB 525 is extremely dangerous and the treatment modalities very different, the secure facility where sexually violent predators are committed needs to be carefully designed and managed. From a treatment perspective, the more self-contained or autonomous the residential sex-offender program setting, the greater the benefits to both staff and residents, and the more likely it is the program goals will be met. Sexually violent predators should not be co-mingled with the psychiatric patients in our State Hospitals. SRS also maintains the Department of Corrections is better able to manage a secure facility of this type with MHRS providing treatment services. The secure nature of this facility is

qualitatively different than the typical management structure and expertise of the State psychiatric hospitals.

Sincerely,

/s/ Donna L. Whiteman
Donna L. Whiteman
Secretary

DLW:GDV:RP:MH:bb

[LOGO]

JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

January 28, 1994

The Honorable Robert Vancrum
The State Senate
State Capitol Building, Room 449-N
Topeka, Kansas 66612

Dear Senator Vancrum:

Senate Bill 525 proposes to provide a system of civil commitment to a facility operated by SRS for persons completing a prison sentence for specified violent, sexual offenses. Determining annual costs for a new program is difficult without a full understanding of the specific goals of the proposed legislation.

We contacted the Department of Corrections and determined there were 331 individuals released during FY 1993 who met the criteria stated in Section 2 of this bill. We are not able to make an accurate estimate on how many of these individuals would be committed to SRS custody. The projected annual cost for each resident of the State Security Hospital for FY 1995 is $57,966. The first year costs could range from (assuming an average stay of 6 months for new admissions) $898,473 for 10% of the released population to $9,593,373 for 100%.

Currently, the State Security Hospital at Larned, Ks. has approximately 30 available beds. The first year of Mental Health Reform downsizing closed 30 adult beds, which allowed us to correct overcrowding on the Security Behavior Ward, but created no new available beds. The final two years of reform could make from 40 to 60 beds available, assuming appropriate remodeling. Should the expected bed need created by SB 525 exceed 70 to 90 beds a new facility would be required. The Attachment provides construction estimates for various sized secure facilities. These estimates were based upon the costs of construction of the Correctional Mental Health Facility in Larned, Ks.

Please do not hesitate to contact George D. Vega at 296-3773 if you need any additional information.

Sincerely,

/s/ Donna L. Whiteman
Donna L. Whiteman
Secretary

DLW:DAJ:hb

cc: Senators Bogina, Bond, Burke, Corbin, Emert, Feleciano, Frahm, Hardenburger, Harris, Kerr, Langworthy, Lawrence, Martin, Morris, Oleen, Papay, Parkinson, Ramirez, Ranson, Reynolds, Rock, Salisbury, Sallee, Steffes, Tiahrt and Vidricksen

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State Of Kansas

[LOGO]

Topeka

House Of
Representatives

James E. Lowther
Representative 60th District
Lyon County
1549 Berkeley Road
Emporia, Kansas 66801

Committee Assignments
Chairman: Legislative Post Audit Committee
Subcommittee Chairman: Appropriations
Member: Education Taxation

March 14, 1994

To: Members of House Judiciary Committee

From: James E. Lowther

Subject: SB 525 by Senator VanCrum and all other 26 Republicans Senators: "Civil commitment of persons who commit sexually violent offenses"

The Sex Predator bill passes the Senate 40 to 0 and the hearing is set for today (3/14) in the House Committee. After a visit with Dr. Mani Lee, Superintended at Larned

State Hospital, I became concerned that the bill might pass in its present form.

Dr. Lee pointed out some problems with the bill that he is very concerned about over staff training and materials and equipment. Currently, there is no Larned State Hospital staff with the expertise to be involved in treatment activities of sexually violent predators. New staff hired for this purpose need to be given special training in facilities outside of Kansas. Also, he states that new equipment and treatment materials need to be purchased. There is no provision in the bill for all this.

Dr. Lee, working with Dr. Stuart Fager, Chief Psychologist at Topeka State Hospital, estimates the minimum number of staff recommended is 41 FTE at an estimated cost of $1.4 million for a program of 25 beds. Having just worked on the budget for the hospital, there is no way these costs can be absorbed. (In fact, under the House Appropriations, the hospital is slated to close two wards and $555,000 was cut from the budget).

There is concern, also, over the fact that in order for the treatment of these offenders to be carried out successfully, the program *must* have control over whoever is admitted. Dr. Lee and Dr. Fager say that SB 525 does not allow for control over who is admitted. These were some of the main problems with the bill that were pointed out to me. I hope you will try to address them in committee.

[LOGO]

Speak out for Stephanie

3/14/94
Kansas House Judiciary Committee
RE: Senate Bill 525
The Stephanie Schmidt Sexual Predator Act

Mr. Chairman and members of the committee:

Good afternoon, I am Gene Schmidt, father of Stephanie Schmidt. Those are words that continue to bring pride to my heart and tears to my eyes. Not because of what she accomplished in her life, but because of what has been denied by her death.

Because of my daughter's death, I along with many others worked on a task force to develop proposed changes in our laws. Changes that would put brakes on the runaway crime of repeat sex offenders. We have proposed 5 very good bills. And, we have turned the process over to very capable and honorable elected officials.

I felt very comfortable with the process. I knew that it would take some time. I knew it would have some opposition. But, I knew my government would not let me down again. Not this time.

But then, I pick up the newspaper and read how some representatives feel we should really take it slow. We shouldn't move to [sic] fast. Others have commented that my wife and I are too emotional about this subject, that we are exploitive and reactionary. Others have gone as far as saying our task force was vigilante group.

Let me assure everyone of a few things: one, I am emotional about this subject, yet I have used every ounce of courage and self control to hold back my tears and my anger. Emotional, yes; illogical, no! As for being exploitive and reactionary, there is no personal advantage in this campaign. Nothing can change the past, we are only trying to save the future for others like Stephanie. How can the desire to do what is right for others be reactionary? Finally, we strongly propose vigilance, not vigilantism.

But then I turn on television and hear now a senator feels about all the proposed crime bills. Some have said these bills would get passed to please the people, but the bills would have no effect. Others say we need more education not incarceration. Yes, we need improved education for sure! But we must close this revolving door of justice before we can offer early preventive methods. Let us put out the fire before we start to rebuild the barn.

In addition to changes in our laws we must change attitudes. We have to change attitudes toward rape, toward criminals, and toward our broken justice system. We have to remove this criminal cancer from our society and we must do it swiftly, boldly, and with the sincere desire to save our society. Even with tougher laws in place, we feel that public safety and awareness have to be paramount to any sexual predators release.

Keep in mind, these are not accidental criminals. Pediphilies [sic] and rapist are not criminals of mistake. These people want to hurt women and children. For us to

continue to turn them loose on the unsuspecting communities and employers is an injustice to everything our country believes in.

The bills we have proposed are good bills. And, they have built in safety devices. The sexual predator acts will keep the repeat sex offenders in – maybe! The rest of the elements: registration, public and employer notification are the safety nets. Some of these predators will slip through, because we keep turning our most violent criminals loose on the public. The same criminals who hide behind our justice system and abuse the judicial process.

My daughter received the death penalty by one of these "released" criminals. She had done no wrong; she had not violated any law; she just accepted a ride home with a friend – a friend who by the choice of my government was protected by right of privacy and from revealing he was a rapist. He did not have to register; his employer did not have to know about his past; and he did not worry about lying on his application. Worst of all, he should never have been released.

I have been told that the wheels of justice move slowly, but I never understood why. It's because citizens like myself have to drag these same wheels with governmental brakes in place. How much longer are we going to wait? How many more rapists and pediphiles [sic] are going to be released before you act on this bill? How many more innocent lives will be shattered while we debate?

Our task force met numerous times and researched the proposal with great detail. Our proposal was not only based on a tried and tested law from another state, but

also on the availability of space in institutions like Larnard, [sic] Kansas: a mental institution that was about to close down a wing for the criminally insane. We do have space: space that would not require additional funding, nor would it require co-mingling of patients with other mental disorders.

In preparing this bill, we constantly measured its effectiveness by one burning question: Who could possibly oppose this bill? In the end, we found our answer: No right thinking person could oppose this bill. We can not continue to experiment on the public. Now is the time for Kansas to show the world its true leadership abilities. Pass Senate Bill 525.

House Judiciary Subcommittee
March 14, 1994
Re: SB 525

Chairman O'Neal and other Committee Members:

On behalf of the Kansas Coalition Against Sexual and Domestic Violence (KCSDV), and Safehouse, which provides services to sexual assault victims in Southeast Kansas, I want to thank you for considering this bill. Both KCSDV and Safehouse urge you to give Kansans necessary protection from sexual predators. I would like to remind you of several things I hope you consider:

1) When considering the cost of enactment, the cost of taking no action must also be reviewed. The cost of these preventable crimes to the victim and family members is great, often resulting in irreparable damage, long-term psychiatric hospitalizations, or loss of life. Additionally, this type of trauma can be devastating to whole communities. The shock waves from the news of Stephanie Schmidt's trauma and death were devastating to many Southeast Kansans. Suddenly, many rape victims who had done fine for many years were back in crisis; flashbacks, nightmares, and other symptoms emerged, causing them to miss work and become dysfunctional in many ways. Our hotline was "hotter" than it has ever been with this type of call. Furthermore, even those who had never been victimized were traumatized. Suddenly, no one felt safe. I repeatedly was called by members of the community who would say they could hardly work without bursting into tears, fearing for their own daughter's safety, terrified that it would happen to a loved one of theirs. The loss of productivity, damage and cost of

repair to the victim and family members, and to the whole community must be considered.

2) This bill is essentially not new. A similar bill was introduced by Senator Dave Kerr and worked by the Senate Judiciary Committee a few years ago, under the direction of Wint Winter. I can't help but think that all of us might very well have been spared the senseless Stephanie Schmidt tragedy, had that bill been passed.

3) This bill is very similar to a Washington State law, which has withstood judicial challenges to its constitutionality.

As you work this bill, we urge you consider its benefits to potential victims, family members, and communities. We believe there is an ethical consideration to protect society from this type of known predator. Thank you for your consideration of our concerns.

Dorothy Miller, Executive Director,
Safehouse, Inc.

KANSAS ALLIANCE FOR THE MENTALLY ILL

S.W. 6th Ste. 305 • P.O. Box 675
Topeka, Kansas 66601
913-233-0755

Testimony on SB525
March 14, 1994

My name is Howard Snyder, and I live in Prairie Village. I am speaking today on behalf of the Kansas Alliance for the Mentally Ill, a state wide organization of families and friends of Kansans who suffer from mental illness.

It should be stated up front we strongly support the "why" behind HB [sic] 525. It addresses a problem that must be solved. But we are in opposition, yes even in shock, at the "how". On page 4, line 27, it states that these very dangerous people are to be turned over to the custody of the secretary of SRS to be held in a secure facility. There is no definition of a "secure facility", so it is conceivable that a secure facility could be any one of the state psychiatric hospitals. This means that these people could be mixed in with our very vulnerable mentally ill family members. This is like putting the fox in the hen house.

I have a 34 year old son who suffers from Schizophrenia, which is a no-fault noncureable brain disease. From time to time, for the rest of his life he may require hospitalization as his symptoms recur. As a poor person with a pre-existing lifetime disease, he is uninsurable in the private system, therefore, he will only have access to the state hospitals. I do not want (nor do you) my son raped by a dangerous sexual predator who has been placed in a state hospital because of SB525.

We already have in front of us the tragedy of the young staff member at Topeka State who was murdered by a dangerous person who had been placed in the general hospital population after the closing of the Awle unit two years ago. We in Kansas AMI stated publically [sic] it was not right to expose the ill people in Topeka State to those dangerous persons. We were told that everything would be alright, and now we all have to live with the consequences. Have you forgotten so soon? The bill should be revised to require that sex offenders be held in a facility away from all state hospitals, preferably by the Department of Corrections which has the facilities and the expertise for holding long term high security inmates.

Another major concern of the families and friends of those Kansans who suffer from mental illness is financial. What is the cost? Where is the fiscal note? We understand that the cost has been estimated at $8 million for the first year, but we have seen nothing in writing.

We understand that the experience in other states has been that only a few sex offenders respond to treatment (the treatment technology in this area is primitive), and that those only responded after very long term very expensive treatment. Page 7, line 3 states that the secretary of SRS is responsible for *all* cost of evaluation and treatment of offenders in custody. Where does the money come from for this new responsibility?

Unless new funds are made available, the new responsibility can only be paid for from existing SRS or DOC funds. If paid from the SRS budget, then it will be paid for by a few – those whose SRS services are cut. If the general population is pushing SB525 then that's who

should pay for it. Any dilution of services to the mentally ill to pay for sex offenders is the equivalent of a selective tax on disabled Kansans who are already poor. What has my disabled son done to be saddled with the cost of providing care to a sexual predator?

In conclusion, consider this. The way SB525 is written, my son is put at risk of being the victim of a sexual predator while he is hospitalized, and having to pay for the predator to be there to prey on him.

Affiliated with the National Alliance for the Mentally Ill.

/s/ Howard W. Snyder
Howard W. Snyder

(LOGO)™ **THE PUBLIC POLICY COUNCIL**
of The Mental Health Associations in Kansas

1333 South 27th Street, Kansas City, Kansas 66106-2124
(913) 722-1115 *FAX (913) 362-8250*

TO: Members of the KS House Judiciary Subcommittee #1

FROM: Betty K. Meyers, Legislative Liaision [sic] Public Policy Council, Mental Health Associations in Kansas

RE: Senate Bill 525 – Sex Predators

DATE: March 14, 1994

I am here today to register the opposition of the Public Policy Council of the Mental Health Associations in Kansas to Senate Bill 525.

We believe that over the long term the placement of sex predators in the custody of SRS will mean a shift in resources away from the treatment of the mentally ill to a group for whom successful treatment strategies do not currently exist. A shift in state dollars to a population for whom treatment does not currently exist away from a population for whom treatment has been shown to be effective makes no sense to our organization.

We also believe that this bill will only serve to endanger the lives of the persistently and severely mentally ill population and place this very vulnerable at further high risk for being taken advantage of as well as physical and psychological abuse.

Until such time as effective treatment strategies become known and are shown to have positive outcomes, we believe that sexual predators should be in the custody of the Department of Corrections. To do otherwise will ultimately mean that this population will most likely end up in mental health centers where there is no capability to handle them, or state hospitals where, until the introduction of this piece of legislation, there has been an effort to close wards and reduce beds (passing these savings along to the local level for the development of services for the mentally ill). We ask you to report this bill adversely.

TESTIMONY ON SB 525

I congratulate the legislature for attempting to rid the community of repeat sexual predators via the so-called "Stephanie Schmidt Bill". We would rather have these repeat offenders in the criminal justice system, because that is what they are – criminals.

However, if they must be placed in the mental health system, we have two requests.

1. After the phrase "held in a secure facility", add "in a building separate from the rest of the Mentally Ill or Developmentally Disabled population". Once before the SRS Administration had the responsibility of keeping violent inmates in a "secure facility"; in this case a locked ward in the Topeka State Hospital. They failed this responsibility and the tragic death of employee, Stephanie Uhlrig followed. Senator Vancrum wants to place these predators in a to-be vacated ward of the old Dillon building at Larned, a building designed to house the criminally insane. We concur. SRS is interested, but has yet to formally agree.

The Senator insists the [sic] the "intent" of this bill is not to jeopardize the present Mental Health population or staff, but the road to you know where is filled with good intentions. Please place this guarantee in the bill!

2. Incarceration of these dangerous predators will cost an undetermined amount of money. To carve this expense out of the present Mental Health budget hurts people who cannot fight back, the Mentally Ill, and could nullify at least part of Mental Health Reform. Please place

enough "new" money in the budget to care for this new class of inmates.

I beg you to think thru the ramifications of this bill before it becomes law. Thank you for your consideration.

Sincerely,

/s/ Hugh T. Moore
Hugh T. Moore, DDS
Advocacy Chairman,
Mental Health Assn.
of Johnson County

TESTIMONY ON S.B. 525

PRESENTED TO:

1994 HOUSE JUDICIARY COMMITTEE

PRESENTED BY:

GEORGE D. VEGA, COMMISSIONER
SRS MENTAL HEALTH & RETARDATION SERVICES

ON BEHALF OF:

DONNA L. WHITEMAN, SECRETARY
SOCIAL AND REHABILITATION SERVICES

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

Testimony on S.B. 525
Presented to the Senate Judiciary Committee
March 14, 1994

The Department of Social and Rehabilitation Services (SRS) opposes S.B. 525 in its present form. We strongly agree with the need to protect society from dangerous sexual predators.

SB 525 represents one step toward addressing a major society problem. The mental health system wants to do its part. We want to state up front mental health treatment may assist a very small number of sexual predators if sufficient resources are provided, but the numbers are extremely small in comparison to the number of people labeled a sexual predator or convicted of a sex-related crime. The mental health system also will resist doing anything which threatens services to the most vulnerable Kansas citizens we are currently serving.

Mental health treatment will not fix the problem. We strongly agree with the opening statements in the bill which advise sexual predators are extremely dangerous and:

- Do not have a mental disease or defect which would allow them to be treated by the current mental health system.
- Generally have antisocial personality features which are:
  - not treatable with today's mental health technology, and
  - make them likely to engage in sexually violent behavior.
- Are likely to repeat acts of violence.

- The treatment needs of this population are very long term.

Mental health professionals have told us:

- Keep this population separate from people with serious mental illness; either in general psychiatric hospital settings or in the state security hospital.
- Focus only on those who *volunteer* to participate; people who want to participate represent those most likely to respond to treatment.
- Control admissions through rigorous screening; keep the numbers within capacity for reasons related to treatment and security.
- If the process requires professionals to state a sexual predator is cured or not likely to repeat acts of violence before a person is discharged, the professionals will not make such statements which might place their reputations and licenses on the line. This means the patients may never be released.
- Successful treatment programs require long-term treatment, usually at least three to five years. The Washington program is four years old, too early to measure its success or failure.

Safety of Those With Mental Illness

The bill requires commitment to a secure facility but does not define or identify the facility. Even though State Security Hospital patients are prisoners or defendants, they are generally seriously mentally ill and thus are

vulnerable. These individuals, therefore, would be subject to exploitation and harm from the predators.

Hospital Vs. Security

The Larned State Hospital has, for some time, been faced with accreditation difficulties with the Joint Commission on Accreditation of Hospital Organization (JCAHO) because of the Security Hospital. Essentially, JCAHO has indicated the Security Hospital appears to be more of a prison than a hospital. Security is more of a priority than the therapeutic environment. As a result of this finding, the hospital has had to take steps to enhance the environment by such things as gradually unlocking bedroom doors at night.

This accreditation difficulty only would be heightened if the sexual predator program is housed in the Security Hospital because there is a substantial need for security with such a program.

It is noted the statute governing the sexual predator program in the state of Washington specifically states: "The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population." Housing of the program at the Security Hospital becomes a paradox. If security needs are met, accreditation is threatened. If the therapeutic environment is addressed, security is threatened. It also is noted that the ward housing the sexual predator program cannot be excluded from the JCAHO process. There is no distinct part provision like there is with HCFA certification.

Space, Education, Training

According to research conducted by the chief psychologist at one of the state hospitals, one of the required characteristics of a successful program is adequate funding for staff, materials, staff training as well as having adequate space to implement the program. Currently, program space at the Security Hospital is less than adequate even for existing programs. Further, there are no staff at Larned State Hospital with the expertise to be involved with treatment activities of sexually violent predators. Larned experiences severe difficulty in recruiting appropriately-trained employees such as psychiatrists, psychologists, and other professionals. Training, educational materials, and equipment is estimated to be in excess of $60,000.

Protection of Society

Clearly, the intent of this bill is to protect society from violent sexual predators. However, as I also understand, the intent is to limit the number of persons involved in the program to approximately the same number as those involved in the program in the state of Washington (20-30). If the number is limited, then protection of society is not achieved except for the limited number who are involved in the program. We note 331 individuals who meet the criteria of the bill were released in FY 1993 from the Department of Corrections.

Although Section 1 of the bill suggests legislative intent to very narrowly apply civil commitment procedures, there is no mechanism to limit the number or kind of individual who can be committed. As a result, there are

likely to be a significant number of individuals who are committed who are not amenable to treatment and for whom treatment is not appropriate. Warehousing these individuals would be the result, and the treatment program would be ineffective.

Furthermore, if the commitment procedures are applied more liberally than the intent to narrowly apply them, the fiscal note will be substantial. As I mentioned earlier, there were 331 individuals released from the Department of Corrections in FY 1993 who met the criteria for commitment under the provisions of this bill. If 90 percent of the individuals were committed, the estimated cost for the first year would be approximately $8.6 million. Since treatment is long term with little guarantee of success, discharges would be few, and the cost would escalate as the number of commitments increase.

Participation in the Washington sexual predator program is voluntary. Implied in the voluntary criterion is the notion of cooperation on the part of the participant, and it can be assumed uncooperative individuals are excluded, and these individuals are likely to be more antisocial and more dangerous. Thus, it cannot be guaranteed that committing the more cooperative individuals will protect society from the most dangerous of sexual predators.

Targeted Populations

Assuming responsibility for a new population increases the possibility of diverting resources from the established targeted populations of adults with severe and persistent mental illness and children/adolescents with serious

emotional disturbances. We are concerned the needs of these most vulnerable of individuals will not be met.

Civil Commitment

Civil commitment is not intended for individuals who choose, of their own will, to commit violent sexual crimes. Civil commitment is intended for those who are unable, because of a thought disorder, to make reasoned decisions about the reality and effects of their illness.

Aftercare

Another essential characteristic of a successful, comprehensive treatment program for sexual predators is the adequate provision of aftercare. Presently, there is a paucity of community programs for this population.

Recommendations

Like you, we want the safety of society protected, and we want to work with you to accomplish this goal. In this light, I urge you to consider a joint effort between the Department of Corrections and SRS to address this problem. This approach seems consistent with the initiative in the state of Washington. We would suggest language be added to the bill in Section 7 (a) to have the facility operated by the Department of Corrections with custody of the individual remaining with the Secretary of SRS. The Secretary of SRS would then contract with the Department of Corrections for the facility, perimeter security, meals, laundry and barber services, and medical

and dental services. The Secretary could retain responsibility for the treatment program.

I also would recommend a section be added to allow for screening of individuals by a mental health professional when there is an intent to file a petition for commitment. Such a provision would allow the intent to narrowly apply commitment procedures to be maintained. Such screening could be conducted by program staff.

If the program is housed in the State Security Hospital or the Department of Corrections, we would recommend a separate funding stream and budget specifically for this program.

Fiscal Note

One ward at State Security Hospital – estimated $434,745 first year assuming five commitments per year and ten evaluations . . . annual cost to increase to $2,183,951 by FY 2000. However, a full staff would be necessary for the program even if only five individuals were admitted. Thus a beginning figure is estimated to be $1,400,000.

Training, education, equipment – $65,000

With no mechanism to limit those committed using FY 1993 individuals who meet criteria of bill released from Department of Corrections – $8,607,899.

Program housed in Department of Corrections (using State of Washington data for FY 1994) – $2,688,904.

(LOGO) KANSAS MENTAL ILLNESS
AWARENESS COUNCIL INC.

House Judiciary Subcommittee #1

March 14, 1994

Executive Director
Associate Director
P.O. Box 12546
Kansas City, Kansas 66112
Office: (913) 432-4544
(913) 432-8682

Good Afternoon Members of the House;

I would like to thank you for this opportunity to speak with you today.

This is a very serious issue for those of us with mental illness, let alone those not mentally ill and even for families and friends it is like a nightmare. That someone who may have abused one of us, may be put in the same hospital or Community Mental Health Center as us. Some of the memories it would bring back, would be a living *hell*, setting us back to square one and to work through all those issues again.

We realize these people need help too but *why* can't the Dept. of Correction's put into place, their own mental health centers and hospital buildings, away from us who have a hard time just dealing with *our own illnesses*. If not, this would cause great havoc for us and for what it will cost in additional medicine and hospitalization time.

With a well organized program you could put things in proper order, to take care of the abusers and those like them, separately from us. As a rule, those of us with a mental illness do not want to hurt anyone or have anyone hurt us. Sometimes it is awful difficult just to take care of

ourselves, let alone to have to worry about who is next to us.

We realize everyone has rights, but taking away a secure, safe hospital is not the way to do this either.

We believe, the Dept. of Corrections System could set in place a special, secure but separate, care facility for these sexually violent predators.

We believe, that you need specially trained professionals and staff to care for these abusers, which is not the same kind of training as for mental illness. We are different but we are dealing with this. We, the mentally ill, can't deal with the past abusers, even as well as the average person, because so many of us have been abused by just such people as these and are hypersensitive and fearful about this issue. Even as a previously wounded animal is "gun shy" we are "abuse shy" particularly of sexual perpetrators. If you mix these sexually violent predators with the *mentally ill*, you will add greatly to our burden. We are not against the intent of this bill but against how it attempts to do it, with no guarantees. We fear without other guarantees in place that, there should be some way, the Dept. of Corrections could set things in place for control, care and treatment of these people and by putting such persons in a secure separate facility.

Due to the above reasons, KMIAC strongly opposes this bill. No one in the mental health system as professionals, needs this with the rest they have to deal with. We voice opposition to this unless;

1. Full funding is guaranteed.

2. No dollars intended to benefit the general psychiatric population (in the hospital or in the community) are diverted now or in the future.

3. All mental health cuts in the Governors budget are fully reinstated.

4. Separate facilities are guaranteed.

Thank you for listening,

/s/ Esther M. Fitzgerald
Esther Fitzgerald
President – KMIAC

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Good Afternoon Members of the House;

I thank you for the opportunity to speak to you today. I am Lonny Lindquist, Executive Director of the Kansas Mental Illness Awareness Council (K.M.I.A.C.), which is the recognized state consumer organization of Kansas. I am also the coordinator of the Ottawa, Ks.

based #1 local consumer run organization, Support Program for Independent Responsible Individuals in Transition Inc. (SPIRIT). I have been a consumer of mental health services since 1970 and in Kansas since 1985.

About this bill, #SB525, which authorizes civil commitment to our state hospitals for convicted sex abusers after serving their prison terms. I don't think anyone can be against keeping them off our streets, possibly getting them some help in a better, yet controlled, environment.

I do think it is unrealistic to consider this bill without *first* including, at least, the following guarantees;

1. Guarantee that this said population gets separate housing facilities with specialized care. (*Guaranteed* not to be mixed with the present population of those mentally *ill*)

2. Guarantee that you provide full funding, separate and apart from those present mentally ill funds, so as not to drain off those limited mental health system moneys or be diverted to sexually violent predators. Thus operating with less, as the mental health system is forced to take on a greater number of population, especially since they would be mandated to do so and the court ordered, it is assumed, will take budget priority over other populations.

3. Guarantee all mental health cuts in the Governors' budget are fully reinstated.

I and those I represent are not against the intent of this bill, *but how it attempts to do it*, and *at who's expense* with no guarantees.

Thank you for your time and consideration in hearing what I have to say, I hope this will help in your decision making.

Sincerely yours,

/s/ Lonny Lindquist
Lonny Lindquist
Executive Director

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on March 21, 1994.

SB 661 – Revocation of driving privileges for persons convicted of crimes and person adjudicated as juvenile offenders.

Chairman O'Neal explained that this would allow courts discretion in juvenile cases to have as an additional penalty the revocation of driving privileges. The sub-committee recommended the bill be passed.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Carmody seconded the motion. The motion carried.

SB 525 – Civil commitment of persons who commit sexually violent offenses

The Chairman explained that this was essentially the Washington State concept. What was missing in the proposed bill was the assurance that those that are civilly committed after a period of incarceration would be kept separate from the other mentally ill population.

Representative Adkins made a motion to report **SB 525** *favorably for passage as amended. Representative Robinett seconded the motion.*

Representative Garner commented that section 5 does not track with the Washington language and *made a substitute motion to strike "based on the petition" on page 4, line 4. Representative Robinette seconded the motion.* This would allow the judge to consider all evidence before him rather

than the evidence before him in the petition. *The motion carried.*

Representative Garner stated the bill includes the right to a 6 person jury trial for the determination of if the person is a sexual predator. *He made a motion to have the reference to the right to trial by a jury on page 4, line 32-33 be changed to the right to a jury trial provision under Chapter 22 in the criminal code where the make-up of the jury is 12 unless there is a stipulation from both for a jury less than 12. Representative Carmody seconded the motion. The motion carried.*

Representative Garner made a motion to insert language in section 7 that the court order would be an appealable order. Representative Macy seconded the motion. The Chairman stated that this is probably an appealable order but making this clear wouldn't present a problem. *The motion carried.*

Representative Wagnon questioned if this would require a totally separate facility or would they be placed in one of the mental hospitals. Chairman O'Neal commented that this bill proposes a separate facility but in the end it may not necessarily be a separate facility but a restricted wing. It is estimated that there would be 25-30 individuals in the first year. There is currently space in Larned, but it wouldn't be a separate building. There has been no separate building identified at this time. This is a way of dealing with those who are in the system now that DOC are afraid that they will be released on the streets, because they would commit another sexually [sic] act if they were released. By having a pre-release hearing to determine if the person ought to be civilly committed, the procedure is civil commitment.

Representative Garner questioned if this would apply to those who are already in the system. Chairman O'Neal replied that it could apply to anyone who is released after the effective date of the bill. Representative Carmody stated that a "reachback" would not be able to recapture those that have already been released on post-release supervision.

Representative Adkins made a motion to report **SB 525** *favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.*

SB 629 – Increase in court docket fees for deposit in law enforcement training center fund

Representative Pauls made a motion to report **SB 629** *favorably for passage as amended. Representative Macy seconded the motion.* Representative Heinemann commented that he would like to see .50 cents rounded up to dollar amounts. Representative Goodwin commented that it would cause other programs to compete for the additional .50 cent docket fee. *The motion carried.*

SB 743 – Allowing county or district attorney to collect administrative handling cost from maker or drawer of bad checks

Representative Mays made a motion to report **SB 743** *favorably for passage as amended. Representative Pauls seconded the motion.*